

ECRI

10 years of combating racism in Europe:

**A review of the work of the European Commission
against Racism and Intolerance**

Mark Kelly
Human Rights Consultants

The opinions expressed in this work are the responsibility of the author(s) and do not necessarily reflect the official policy of the Council of Europe.

All requests concerning the reproduction or translation of all or part of the document should be addressed to the Publishing Division, Communication and Research Directorate (F-67075 Strasbourg Cedex or publishing@coe.int).

All other correspondence concerning this publication should be addressed to the Secretariat of ECRI (F-67075 Strasbourg Cedex or combat.racism@coe.int).

About the author

Mark Kelly LL. (Hons), M.Sc., M.Phil, is an international human rights lawyer. Until September 2000, he was Head of Unit in the Secretariat of the Council of Europe's European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Since that date, he has been a Director of the independent consultancy firm, Human Rights Consultants.

Council of Europe
F-67075 Strasbourg Cedex

© Council of Europe, February 2004
Printed in Germany

CONTENTS

FOREWORD	11
I INTRODUCTION	13
II REVIEW OF ECRI's SUBSTANTIVE WORK	19
A COUNTRY-BY-COUNTRY WORK	19
1. Preliminary remarks	19
2. Main messages of ECRI's second round reports; issues monitored and standards developed.	20
a. International legal instruments	20
b. Constitutional provisions and other basic provisions	21
i. Constitutional provisions	21
ii. Other basic legal provisions	23
(a) Electoral law	23
(b) Citizenship law	24
(c) Language law	25
(d) Culture	26
(e) Religion	26
(f) Political parties	27
c. Criminal Law	27
i. Substantive provisions	27
ii. Implementation	29
iii. Prosecution authorities	30
iv. Law enforcement agencies	30
v. Third parties	31
vi. Training	31
vii. Awareness raising	31
viii. Data collection	32
d. Civil and administrative law	32
i. Substantive provisions	33
ii. Implementation	35
(a) Enforcement mechanisms	35
(b) Burden of proof	35
(c) Role of third parties	36
iii. Awareness raising	36
iv. Data collection	36

e. Administration of justice	37
i. Training and awareness raising	37
ii. Sentencing and prosecution practices	38
iii. Access to the justice system	38
iv. Ensuring consistency in the administration of justice	38
v. Data collection	39
f. Specialised bodies and other institutions	39
i. Composition, mandate and powers	40
ii. Independence and impartiality	40
iii. Role of specialised bodies and other institutions	40
(a) Supervising the implementation of anti-discrimination legislation	41
(b) Investigating complaints of discrimination	41
(c) Advisory and outreach role	42
(d) Awareness raising	42
iv. Co-ordination with other bodies and groups	43
v. Conducting studies	43
vi. Review of the work of specialised bodies	43
g. Education/training	43
i. Schools	43
(a) Content and delivery of human rights / anti-discrimination education	44
(b) Teacher training and teaching materials	46
(c) Combating racism and harassment in schools	46
ii. Justice system and public authorities	46
h. Awareness raising	47
i. Aims and objectives	47
ii. Substance of awareness-raising activities	47
(a) Challenging concepts of national identity	48
(b) Promoting reconciliation	48
iii. Targeting specific groups	49
(a) Public officials	49
(b) Politicians, political groups and the media	49
(c) Minority groups	50
iv. Bolstering awareness-raising activities	50
v. Collaboration with civil society	50
vi. Impact assessment	51
i. Reception and status of non-citizens	51
i. Immigration legislation	51
ii. Illegal immigration	52
iii. Asylum determination procedures	52

iv. Detention and deportation of asylum seekers and non-citizens	53
v. Accommodation and provision for asylum seekers	54
vi. Non-citizens status	54
vii. Integration strategies	55
viii. General climate concerning non-citizens	55
j. Access to public services	56
i. Legislative and other measures.	56
ii. Housing	56
iii. Access to public places	57
iv. Access to health services	57
v. Training	58
vi. Targeting marginalised groups	58
vii. Access to education	58
(a) Prevention of discrimination in schools	58
(b) Integration of students from minority backgrounds	59
(c) Linguistic issues	59
(d) Positive measures	60
(e) Recruitment and training	61
(f) Flexibility of legal provisions	61
(g) Research regarding the situation of minority groups	62
(h) Issues regarding religion	62
(i) Reviews of legislation, policy and practice	62
k. Employment	62
i. Adoption and implementation of anti-discrimination legislation	62
ii. Awareness raising	63
iii. Targeting members of particular groups	63
(a) Data collection	63
(b) Positive measures	63
(c) Language training	64
iv. Migrant workers	64
v. Linguistic issues	65
l. Religious groups	65
m. Monitoring the situation in the country	67
i. Collection of baseline data	67
ii. National surveys	67
iii. Monitoring the implementation of legal provisions and other measures	67
iv. Monitoring and “proofing” proposed legislation	68

n.	Conduct of law enforcement officials	68
i.	Accountability of law enforcement officials	68
(a)	Rule of law	68
(b)	Independent complaints mechanisms	68
(c)	Internal discipline	69
ii.	Combating racist crime	69
iii.	Training	70
iv.	Awareness raising	70
v.	Recruitment	71
vi.	Linguistic and cultural issues	71
vii.	Data collection	72
o.	Media	72
i.	Implementation of legal provisions and other measures	72
ii.	Self-regulation	73
iii.	Training	73
iv.	Minority and other groups	73
p.	Other issues of country-specific concern	74
i.	Minority or vulnerable groups	74
(a)	Roma/Gypsy communities	77
(b)	Muslim communities	78
(c)	Jewish communities	78
(d)	Indigeneous peoples	79
(e)	Formerly deported populations and returnees	79
(f)	Persons of immigrant origin or background	79
ii.	Extremist political and other groups	80
(a)	Implementation of legislation	80
(b)	Additional measures to combat extremism	80
(c)	Leadership	81
iii.	Situations resulting from internal or external conflict	81
B	WORK ON GENERAL THEMES	82
1.	Preliminary remarks	82
2.	General Policy Recommendations and examples of "good practices"	83
a.	Combating racism, xenophobia, antisemitism and intolerance ...	83
i.	Legal measures	83
ii.	Education, training and research	84
iii.	Police and public officials	85
iv.	Access to public services and employment	85

b.	Specialised bodies at national level to combat racism, xenophobia, antisemitism and intolerance	86
i.	Statutes establishing specialised bodies	86
ii.	Alternative forms of specialised bodies	86
iii.	Functions and responsibilities of specialised bodies	86
iv.	Administration and functioning of specialised bodies	87
c.	Combating racism and intolerance against Roma/Gypsies	87
d.	National surveys on the experience and perception of discrimination and racism from the point of view of potential victims	90
i.	Organisation of surveys	90
ii.	Survey design	90
iii.	Follow-up	90
e.	Combating intolerance and discrimination against Muslims	91
f.	Combating the dissemination of racist, xenophobic and antisemitic material via the Internet	93
g.	National legislation to combat racism and racial discrimination ..	93
i.	Constitutional law	94
ii.	Civil and administrative law	95
iii.	Criminal law	96
iv.	Other legal provisions	96
3.	Broadening the scope of the non-discrimination provisions of the European Convention on Human Rights	97
4.	European and World Conferences against Racism	98
a.	Preparations for the European and World Conferences against Racism	99
i.	Legal protection	99
ii.	Policies and practices	100
iii.	Education and awareness-raising	100
iv.	Information, communication and the media	100
b.	European Conference against Racism	101
i.	Political Declaration	101
ii.	General Conclusions	102
c.	World Conference against Racism	103
d.	Follow-up to the European and World Conferences against Racism	104

C	RELATIONS WITH CIVIL SOCIETY	106
1.	Preliminary remarks	106
2.	ECRI's Programme of Action on relations with civil society	106
a.	Information sessions	106
b.	Thematic meetings and consultations with non-governmental organisations	109
c.	Development of a communication strategy	110
d.	Website development	111
e.	Activities targeted at the political bodies of the Council of Europe	111
f.	Contacts with the youth sector	111
III	ASSESSMENT OF THE IMPACT OF ECRI's SUBSTANTIVE WORK	113
A.	INTRODUCTION	113
B.	COUNTRY-BY-COUNTRY WORK	115
1.	International legal instruments	115
2.	Constitutional and other basic provisions	116
3.	Criminal law	117
4.	Civil and administrative law	118
5.	Specialised bodies and other institutions	119
6.	Education	120
7.	Reception and status of non-citizens	121
8.	Access to education	122
9.	Employment	123
10.	Vulnerable groups	124
11.	Monitoring	125
12.	Conduct of law enforcement officials	125
13.	Media	126
C.	WORK ON GENERAL THEMES	128
1.	General Policy Recommendations	128
2.	Examples of "good practice"	131
3.	Broadening the scope of Article 14 of the European Convention on Human Rights through Protocol No. 12	132
4.	European and World Conferences against Racism	133

D. RELATIONS WITH CIVIL SOCIETY	134
1. Introductory remarks	134
2. Enhancement of relations with civil society	134
3. In-country information sessions	135
4. Website	135
IV. CONCLUSION	137
APPENDICES	141
STATUTE OF ECRI	143
INTERNAL RULES OF PROCEDURE OF ECRI	147
LIST OF PUBLICATIONS	157

FOREWORD

In Strasbourg, on 22 March 1994, the European Commission against Racism and Intolerance (ECRI) convened for the very first time. Created by the first Summit of Heads of State and of Government of the Council of Europe member States, (Vienna, October 1993), and considerably strengthened by the second Summit (Strasbourg, October 1997), ECRI represents on many levels an original and unique example of the development of an independent human rights monitoring mechanism in a practical and progressive way.

Ever since its founding declaration of “Never Again”, the Council of Europe has been continually active in the fight against all forms of intolerance. It has offered a well-adapted framework for the creation and operation of ECRI. It is through a global and multidisciplinary approach that ECRI analyses and proposes solutions to the problems of racism, xenophobia, antisemitism and intolerance faced by member States of the Council of Europe. Today, ten years after its creation, ECRI can take stock of its achievements. Of course, much remains to be done, and ECRI’s task is far from being completed. However, its solid and positive contribution to the fight against contemporary expressions of racism in Europe is undeniable. ECRI’s work on the prevention of and solutions to problems related to racism and intolerance has always been firmly anchored to the protection and promotion of human rights. In this respect, ECRI’s place within the Council of Europe has been very important.

This publication, whose author is an independent consultant, has been prepared in honour of ECRI’s tenth anniversary. It provides a synthesis of the gist of ECRI’s work. It draws out the main messages of ECRI’s country-by-country reports, takes into account ECRI’s General Policy Recommendations and describes its relations with civil society. It provides a sort of “state of play” of ECRI’s work, highlighting how ECRI has contributed to the fight against racism in Europe, and evaluates the impact of its action.

This publication contains a considerable amount of information and constitutes a rich source of inspiration. I hope that it will be widely used by all those involved in the fight against racism, whether it be national authorities, non-governmental organisations or ordinary citizens interested in working towards a Europe free from racism and racial discrimination.

Walter Schwimmer
Secretary General of the Council of Europe

I INTRODUCTION

BACKGROUND

The European Commission against Racism and Intolerance (ECRI) was established in 1993 by the first Summit of Heads of State and Government of Council of Europe member States.¹ It operates under the auspices of the Council of Europe, an inter-governmental organisation based in Strasbourg, France.



Heads of State and Government of Council of Europe member States, Vienna, October 1993

Established in 1949, the role of the Council of Europe is to strengthen democracy, human rights and the rule of law in its member States. Through its activities, the Council of Europe aims: to protect human rights, pluralist democracy and the rule of law; to help consolidate democratic stability in Europe by backing political, legislative and constitutional reform; to seek solutions to problems facing European societies, including discrimination against minorities, xenophobia and misuse of drugs and to enhance Europe's cultural heritage in all its diversity.

Within the Council of Europe, ECRI works to combat racism, xenophobia, antisemitism and intolerance in Europe. It takes a "rights-based" approach to its work and undertakes activities aimed at ensuring that the right to freedom from discrimination is enjoyed by all persons present on the territory of Council of Europe member States. It works to prevent violence, discrimination and prejudice faced by persons or groups of persons on grounds of "race", colour, language, religion, nationality and national or ethnic origin.

1. The decision to establish ECRI is contained in the Vienna Declaration adopted by the first Summit of Heads of State and Government of the member States of the Council of Europe on 9 October 1993.

ECRI works at both international and national level, co-operating with other international organisations active in the field and undertaking activities in respect of each of the 45 member States of the Council of Europe.² ECRI is composed of independent members from the member States of the Council of Europe, and a Secretariat based in Strasbourg. There are currently 42 members of ECRI.³ In accordance with the Statute of ECRI, the members serve in their individual capacity and must act independently and impartially in exercising their mandate. The members are appointed by their governments on the basis of their high moral authority and recognised expertise in dealing with racism, racial discrimination, xenophobia, antisemitism and intolerance.⁴

ECRI exercises its mandate through its programme of activities which consists of three main strands: country-by-country work, work on general themes and relations with civil society.⁵ In the context of its *country-by-country work*, ECRI visits all member States of the Council of Europe and prepares country-specific reports on matters falling within its competence. ECRI's *work on general themes* includes developing General Policy Recommendations; the collection and publication of examples of "good practices" in the field of combating racism; action aimed at broadening the scope of the non-discrimination provisions of the European Convention on Human Rights and active participation in the European and World Conferences against Racism. ECRI has also developed a detailed Programme of Action aimed at enhancing and strengthening its *relations with civil society* and raising awareness within civil society of its work and activities.

RECENT DEVELOPMENTS

ECRI has been active in the field of combating racism throughout Europe for just over 10 years. A number of significant developments in recent years have re-shaped, to a certain extent, the arena in which ECRI operates and the issues with which it is engaged.

European and World Conferences against Racism

The European and World Conferences against Racism, held, respectively, in October 2000 and September 2001, set a new agenda for the fight against racism and intolerance at global and regional level. ECRI prepared a position paper for the European Conference and its Secretariat was responsible for organising the Conference and co-ordinating the General Conclusions and the Political Declaration of the Conference, which formed the European contribution to the World Conference. Both conferences called on States to adopt specific measures to enhance legal protection, policies and practices aimed at combating racism and intolerance and to undertake education and awareness-raising

2. As of 1 November 2003, there were 45 member States of the Council of Europe. For an up-to-date list of member States, consult the website of the Council of Europe: www.coe.int

3. As of 1 November 2003, there were 42 members of ECRI. For an up-to-date list of members, consult the website of the ECRI: www.coe.int/ECRI

4. See Article 2, Statute of ECRI, Resolution Res (2002) 8 of the Committee of Ministers on the Statute of the European Commission against Racism and Intolerance.

5. ECRI and its programme of activities, May 2003, CRI (99) 53 rev. 4.

activities aimed at the general public and specific groups, such as law enforcement agencies and the media.

One of the recommendations of the European Conference was of particular significance for ECRI; it called upon member States of the Council of Europe to consider "how to best reinforce the action of ECRI". As a result, a new Statute for ECRI was adopted by the Committee of Ministers of the Council of Europe in June 2002.⁶ Article 1 of the Statute lists the objectives of ECRI as follows: "to review member States' legislation, policies and other measures to combat racism, xenophobia, antisemitism and intolerance, and their effectiveness; to propose further action at local, national and European level; to formulate General Policy Recommendations to member States; to study international legal instruments applicable in the matter with a view to their reinforcement where appropriate". The principle of the independence and impartiality of the members of ECRI is guaranteed in Article 2 of the Statute and terms of reference for ECRI's country-by-country monitoring work, work on general themes and relations with civil society are set out in Articles 11 to 13.

ECRI considers that its new Statute consolidates its role as a monitoring mechanism in the field of human rights as regards the fight against racism and intolerance and guarantees the independence and impartiality of its members. It also considers that the adoption of its Statute by the Committee of Ministers demonstrates the determination of the member States of the Council of Europe to continue to co-operate in the fight against racism in Europe.⁷

In the period since the conferences, ECRI has been working to translate the general political commitments undertaken at the conferences into concrete action to combat racism and intolerance.

For example, key conference recommendations regarding national legislation to combat racism and racial discrimination, and the adoption of national action plans against racism have been reflected in ECRI's recent General Policy Recommendation No. 7. The Recommendation calls upon member States to assume their political responsibilities by enacting legislation against racism and racial discrimination (if such legislation does not already exist or is incomplete). In order to assist States to develop the content of such legislation, GPR 7 provides a detailed account of the "key components" which it should contain, including as regards constitutional law, civil and administrative law and criminal law.

Protocol No. 12 to the European Convention on Human Rights

The European Convention on Human Rights is one of the principal human rights instruments upon which ECRI bases its 'rights-based' approach to combating racism and intolerance. In its Article 14, the Convention prohibits discrimination in relation to the

6. Council of Europe, Committee of Ministers, Resolution Res(2002)8 on the Statute of the European Commission against Racism and Intolerance (adopted on 13 June 2002).

7. ECRI, Annual Report on ECRI's activities covering the period from 1 January to 31 December 2002, CRI (2003) 23, at paragraph 20.

enjoyment of the rights set out in the Convention. ECRI proposed that the scope of this protection should be broadened to include a more general prohibition of discrimination encompassing additional rights not listed in the ECHR (for example; economic, social and cultural rights). Further to ECRI's proposal, and after four years of deliberations, Protocol No. 12 to the ECHR, which broadened the protection afforded under Article 14 of the Convention, was opened for signature in June 2000. The Protocol will enter into force once ten Council of Europe member States have ratified it.⁸ ECRI has actively pursued the ratification of the Protocol by member States in the context of its country-by-country work – in particular in its reports on member States – and its work on relations with civil society.

11 September 2001

The tragic events of 11 September 2001 had a significant impact on the consideration of issues related to international terrorism and the international human rights framework. In December 2001, ECRI adopted a Declaration in relation to these events in which it recognised the need for effective measures to be taken to combat terrorism and stated its view that such measures should not become a pretext under which discrimination and intolerance would be allowed to flourish.⁹ The Declaration called on member States to remain vigilant as regards hostile reactions towards particular groups of the population.

In particular, in its Annual Report for 2002, ECRI noted an escalation of the problem of Islamophobia following 11 September 2001.¹⁰ Manifestations of this problem include an increase in prejudice against Muslim communities involving acts of violence, harassment, discrimination, negative attitudes and stereotypes. In response to this escalation, ECRI has noted the need for enhanced vigilance of possible discrimination against Muslims and called on member States to implement its General Policy Recommendation No. 5 on combating intolerance and discrimination against Muslims.

TIME TO TAKE STOCK

In March 2002, ECRI decided that the time had come to commission an independent review of its work. Given that ECRI completed the visits of the second round reports on member States in December 2002, and that the last of the reports on those visits was published in November 2003, the period of ECRI's second round of reports – January 1999 to December 2002 – was selected as the review period.

Focussing on this period also enabled the review to take account of recent developments in ECRI's work as a result of the European and World Conferences against Racism, ECRI's new Statute, Protocol No. 12 to the ECHR, and the aftermath

8. The current state of ratifications of Protocol No. 12 can be found at <http://conventions.coe.int>.

9. ECRI, Annual Report on ECRI's activities covering the period from 1 January to 31 December 2001, CRI (2002) 19.

10. ECRI, Annual Report on ECRI's activities covering the period from 1 January to 31 December 2002, CRI (2003) 23, at paragraph 7.

of 11 September 2001. It is hoped that this stocktaking of ECRI's activities during its second round of reports will also prove useful as ECRI considers how best to proceed during the third round of reports to member States which has now begun.

The content of the Review

The review is divided into two sections: Section II is a review of ECRI's substantive work and Section III is an assessment of the impact of that work.

Section II reviews all three strands of ECRI's programme of activities; country-by-country work, work on general themes and relations with civil society. As regards country-by-country work, ECRI has produced second round reports on 43 of the member States of the Council of Europe. This part of the Review highlights the "main messages" which ECRI has sought to convey during its visits to this diverse range of States. In doing so, it aims to highlight messages of potentially general application which have been developed by ECRI in these country-specific contexts. All aspects of ECRI's work on general themes are explored as is its work on relations with civil society.

Section III of the report contains an assessment of the impact of ECRI's work across the three main strands of its programme of activities. The impact assessment was compiled by reviewing the responses to a detailed questionnaire sent to key non-governmental organisations, national human rights and anti-racism institutions and national authorities in three Council of Europe member States. The questionnaires invited respondents to comment on their familiarity with ECRI's work and to assess its impact. The responses to the survey included sufficient detail to enable a qualitative assessment to be made of the impact of ECRI's activities in these countries.

II REVIEW OF ECRI'S SUBSTANTIVE WORK

A COUNTRY-BY-COUNTRY WORK

1. Preliminary remarks

Country-by-country work is one of the three main strands of ECRI's programme of activities, the other two being work on general themes and relations with civil society. These three strands of ECRI's work are closely linked and are intended to be mutually reinforcing. It is therefore essential not to consider ECRI's country-by-country work in isolation, but rather in the context of its work on general themes and relations with civil society as described below in sections B and C of this report.

Country-by-country work involves scrutiny by ECRI of the situation in each and every member State of the Council of Europe on an "equal footing". As ECRI puts it in its most recent annual report: "this is a method whereby ECRI closely examines the situation in each of the member States of the Council of Europe and draws up, following this analysis, suggestions and proposals as to how the problems of racism and intolerance identified in each country might be overcome. The aim of this exercise is to formulate helpful and well-founded proposals which may assist governments in taking practical and precise steps to counter racism and intolerance".¹¹

ECRI's reports on its "second round" of country-by-country work were compiled after "contact visits" to 43 Council of Europe member States. ECRI has specified that "the aim of the contact visits is to obtain as detailed and complete a picture as possible of the situation regarding racism and intolerance in the countries being examined. The visits provide an opportunity for the rapporteurs and co-rapporteurs to meet officials from the various ministries and national public authorities dealing with issues within ECRI's remit. They also allow the rapporteurs and co-rapporteurs to meet representatives of NGOs working in the field, as well as some of ECRI's other partners and other parties concerned with matters within ECRI's remit".¹²

On foot of the "contact visits", a draft report prepared by ECRI is sent to the national authorities of the member States for a brief process of confidential dialogue. The report is reviewed in the light of that dialogue and then adopted by ECRI in its final form. The report is then formally transmitted to the member State and made public two months after the transmission unless the government in question expressly opposes its publication.

11. ECRI, Annual Report on ECRI's activities covering the period from 1 January to 31 December 2002, CRI (2003) 23, at page 13.

12. ECRI, Annual Report on ECRI's activities covering the period from 1 January to 31 December 2002, CRI (2003) 23, at page 14.

Each second round report produced by ECRI noted progress – or lack of progress – concerning the proposals set out in its first round report; updated the substantive content of the report; and reviewed issues of particular concern in each member State.

This section of the Review extracts and summarises the *main messages* in ECRI's forty-three second round country-by-country reports.

2. Main messages of ECRI's second round reports; issues monitored and standards developed.

a. International legal instruments

ECRI encourages all member States to ratify the full complement of international instruments concerning racism and intolerance and to refrain from lodging any reservations to the provisions of such instruments.

In pursuance of this goal, ECRI actively monitors the ratification and incorporation by member States of the key international human rights instruments concerning racism and intolerance. These include: the European Convention on Human Rights and Fundamental Freedoms and its Protocols; the Council of Europe Framework Convention for the Protection of National Minorities; the International Convention on the Elimination of All Forms of Racial Discrimination and other international instruments elaborated by the Council of Europe, the United Nations and the International Labour Organisation.

ECRI works to ensure that member States have ratified and incorporated into domestic law all of the relevant instruments in this field.

ECRI emphasises that information concerning the principles, purposes and complaints mechanisms available under these instruments should be disseminated widely among the general public and the legal profession.

Pursuing ratification of international instruments

Where there is a national impediment to ratification or incorporation of an international instrument (for example on the grounds that a provision of the instrument is incompatible with the State's constitution) ECRI urges member States to pursue ratification and incorporation of the instrument in question, including through proposing enabling constitutional amendments.¹³

In addition to monitoring the ratification of international instruments by States, ECRI *examines the operational status* of such instruments in the domestic law of member States. It places the onus upon member States to ensure that ratified international instruments have effect. This issue is of particular importance with regard to member States which follow a so called "dualist system".

13. See, for example, ECRI second report on France, at paragraph 2.

In a “dualist” state, ratified international treaties do not automatically become part of the domestic law of the state, but generally must be transformed into the domestic law in order for the treaty to have effect at domestic level. In respect of such dualist states, ECRI recommends that steps be taken to transpose relevant international instruments into the domestic law of the state. The dualist member States of the Council of Europe include Ireland, Norway, and the United Kingdom.

Incorporation of international instruments

In its second report on Norway, ECRI noted that a number of international instruments, including the European Convention on Human Rights had been incorporated into the domestic law of the State. ECRI encouraged the Norwegian authorities to proceed with the incorporation of other international human rights conventions and to ensure that all international human rights instruments enjoy the same status within the domestic legal order.¹⁴

In “monist states”, once ratified, international instruments become part of the domestic law.

Awareness raising

Azerbaijan is a “monist” State. ECRI has encouraged the Azerbaijani authorities to ensure that the legal community is aware of the provisions of the international instruments which are binding upon States.¹⁵

In respect of both dualist and monist states, ECRI emphasises that the national authorities should ensure that the primacy of international instruments over domestic law is upheld in practice.

b) Constitutional provisions and other basic provisions

i. Constitutional provisions

Many member States have written constitutions which formally guarantee equality before the law and protection from discrimination to individuals within the jurisdiction of the State. ECRI carefully examines the *substantive content, practical application and implementation* of such constitutional provisions in member States and makes recommendations aimed at enhancing the effectiveness of such provisions.

As regards the *substantive provisions*, in general these should include a guarantee of equality before the law for all persons and a prohibition of discrimination against all persons on a number of enumerated grounds including, at a minimum; race, colour, language, national or ethnic origin, sex, religion and nationality. The effect of the provisions should be the prohibition of all possible discrimination against individuals present on the territory of member States. ECRI is supportive of the introduction and retention of supplementary constitutional protections for members of particularly vulnerable

14. ECRI second report on Norway, at paragraph 2.

15. ECRI second report on Azerbaijan, at paragraph 5.

16. For example, see ECRI second report on Croatia, at paragraph 8.

groups.¹⁶ ECRI also supports constitutional provisions which provide a legal basis for the adoption of positive action in favour of disadvantaged individuals and groups.¹⁷

Enumerated grounds

In Sweden, the “Instrument of Government” states that no act of law or other provision may imply the unfavourable treatment of a citizen by reason of race, colour or ethnic origin. A foreign national within the realm shall be equated with a Swedish citizen in respect of protection against unfavourable treatment on these grounds. ECRI noted, however, that there is no constitutional provision specifically protecting all persons against discrimination on the grounds of race, colour, religion, nationality, or national or ethnic origin and recommended that such provisions be introduced.¹⁸

ECRI encourages member States to refrain from providing for extensive restrictions on human rights and fundamental freedoms in constitutional provisions. In particular, ECRI is concerned that any restrictions on the peaceful expression of ethno-cultural identity may impact disproportionately upon particular groups.

Restrictions on the exercise of rights

In its second report on Turkey, ECRI noted that the Turkish Constitution makes possible wide limitations on the exercise of fundamental rights in order to safeguard, *inter alia*, public order, public interest and public morals. Specific restrictions are also set forth in relation to specific fundamental rights and freedoms. Furthermore, Article 14 of the Constitution provides that the exercise of rights with specified aims is prohibited. ECRI expressed concern that the scope of limitations to fundamental rights and freedoms contained in the provisions mentioned above made possible the imposition of wide restrictions on non-violent expression of ethno-cultural identity and considered that this situation impacted negatively on the possibility to guarantee more pluralism in Turkish society.¹⁹

However, ECRI also acknowledges that, in certain situations restrictions on the exercise of rights through constitutional provisions may be required in the interests of combating racism. In this regard, ECRI encourages States to ensure that a balance is struck between competing rights. For example, ECRI notes that restrictions on the right of freedom of expression, assembly and association may be required in order to combat racism. In its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, ECRI calls on States to ensure that any such restrictions are in conformity with the European Convention on Human Rights. For further information on Recommendation No. 7, see Section II B 2 (g).

ECRI has noted that, in some member States, constitutional provisions provide for the protection of the human rights of citizens without making any explicit reference to the situation of non-citizens. In several member States, constitutional courts have held that all or certain human rights protections set out in constitutional provisions

17. ECRI second report on Spain, at paragraph 5.

18. ECRI second report on Sweden, at paragraph 5.

19. ECRI second report on Turkey, at paragraph 5.

apply to non-citizens.²⁰ In order to clear up any ambiguity concerning this issue, ECRI recommends that member States make express provision for the *application of constitutional provisions* to all persons within its jurisdiction.

Application of constitutional provisions to all individuals

In its second report on the Ukraine, ECRI noted that the Constitution guarantees freedom from discrimination for all "citizens". ECRI recommended that this protection be extended to all individuals, not just to Ukrainian citizens.²¹

ECRI monitors the enforcement of constitutional provisions at national level and calls on States to adopt legislation, where necessary, to ensure the *implementation* of constitutional provisions in practice.

Enforcement of constitutional provisions

In its first report on Belgium, ECRI expressed concern that prosecutions regarding the publication of racist material were frustrated by the complex court procedures involved. In its second report, ECRI noted that a constitutional amendment had been made aimed at resolving this problem. ECRI encouraged the Belgian authorities to monitor the operation of the amended procedures and to ensure effective implementation of the relevant legal provisions.²¹

ECRI has also emphasised that, where a constitution provides for a complaints procedure through which an individual can challenge the constitutionality of legislation or practices, activities aimed at raising awareness of the existence of such complaints mechanisms should be undertaken.²³

ii. Other basic legal provisions

ECRI examines national legislative provisions in key areas such as electoral law, citizenship, language, culture, religion and political parties. In regard to the specific situation in each member State, ECRI evaluates the extent to which such legislative provisions adequately prohibit discrimination, promote integration and protect vulnerable groups in practice. Where ECRI identifies a gap in legal protection and/or a failure to implement existing provisions, recommendations are addressed to the State concerned to remedy the situation.

ECRI also urges States to ensure that such legislation is in line with relevant international standards.

(a) Electoral law

Positive and proactive measures should be undertaken to facilitate access for members of minority groups and non-citizens to registration for voting in elections. ECRI supports

20. See, for example, ECRI second report on Ireland, at paragraph 7.

21. ECRI second report on Ukraine, at paragraph 7.

22. ECRI second report on Belgium, at paragraph 3.

23. See, for example, ECRI second report on Latvia, at paragraph 10.

measures aimed at promoting the representation of members of minority groups in political life including, where appropriate, the relaxation of requirements concerning proficiency in the official language.²⁴

Some examples of positive and proactive measures that ECRI has welcomed

In Ireland, a flexible approach to the requirement of declaring a permanent address in voting registration has been adopted in order to facilitate access to the voting register by the Traveller community.²⁵

In Lithuania, a constitutional provision limiting eligibility to vote to citizens was amended. All permanent citizens, irrespective of their citizenship, can now vote in elections.²⁶

In Poland, electoral law affords preferential threshold requirements to candidates from minority groups.²⁷

(b) Citizenship law

Citizenship legislation should provide clear, transparent and inexpensive procedures in respect of naturalisation and the granting of citizen status. Access to such procedures by long-term residents, children born and raised in a state, non-citizen spouses, members of minority groups and returning refugees or displaced persons should be actively facilitated.

Naturalisation procedures

In Italy, the attribution of citizenship lies within the discretion of the authorities and the eligibility criteria set out are non-exhaustive. ECRI has encouraged Italy to simplify and standardise its naturalisation procedures.²⁸

The criteria required for citizenship should be clearly set out. Criteria should not include elements such as physical or mental health which, by their nature, may be applied in an arbitrary and discriminatory manner. In addition, member States should ensure that requirements relating to levels of income and employment records of applicants for citizenship do not adversely affect or discriminate against particular groups.²⁹

As regards the requirement of knowledge of the official language and the national constitution, where such knowledge is tested by examination, language teaching should be provided free of charge. In addition, targeted information activities should be undertaken to raise awareness of the requirements of language examinations and the availability of free tuition.³⁰

ECRI encourages member States to facilitate the naturalisation of non-citizens who have lived in the territory of a State for a substantial period of time. ECRI has noted that the European standard regarding the required period of residency is 10 years. However,

24. ECRI second report on Estonia, at paragraph 15.

25. ECRI second report on Ireland, at paragraph 75.

26. ECRI second report on Lithuania, at paragraph 8.

27. ECRI second report on Poland, at paragraph 8.

28. ECRI second report on Italy, at paragraphs 8-10.

29. See ECRI's second report on "the Former Yugoslav Republic of Macedonia", at paragraph 7.

30. ECRI second report on Estonia, at paragraphs 9-11.

ECRI continues to encourage member States to retain any shorter periods of time prescribed in domestic law in order to facilitate the integration of immigrant populations legally resident in a State.³¹

ECRI encourages member States to provide information on how to apply for citizenship status and on the benefits of obtaining such status. Information campaigns should be targeted at marginalised groups and other groups which may be unaware of their eligibility for citizenship status.

Awareness raising

ECRI has encouraged the Ukrainian authorities to ensure that repatriated members of the formerly deported population are aware of the ways in which they can apply for citizenship through naturalisation.³²

The authorities must ensure that citizenship legislation is implemented consistently throughout the territory. In particular, the processing of applications by local authorities should be closely supervised by the central authorities in order to prevent any instances of discriminatory practices.³³ Member States should also ensure that, in their application, legislative provisions enable the authorities to take into account the special circumstances of applicants for citizenship status.

Special circumstances

In Croatia, an administrative decision was taken exempting returning refugees and displaced persons from the five years continuous residency in Croatia required for the granting of citizenship status. ECRI welcomed this measure and encouraged the authorities to ensure that the administrative decision was uniformly applied at the local level.³⁴

In the Czech Republic, ECRI encouraged the authorities to adopt a flexible approach regarding proof of residence in respect of applications for citizenship from members of the Roma/Gypsy community holding Slovak citizenship.³⁵

ECRI encourages member States to refrain from insisting that applicants for citizenship renounce their existing citizenship status before acquiring citizenship status from the state concerned. In other words, ECRI encourages States to make provision for dual citizenship status. ECRI notes that acceptance of dual citizenship status is a growing trend in Europe and is in line with the provisions of the European Convention on Nationality. Such provisions currently exist in several member States, for example, in Sweden.

(c) Language law

ECRI encourages States to establish and maintain legal provision for the recognition of minority languages, where appropriate with regard to the population of such minorities

31. See, for example, ECRI second report on Italy at paragraph 10 and ECRI second report on Denmark at paragraph 5.

32. ECRI second report on Ukraine, at paragraph 10.

33. ECRI second report on the Czech Republic, at paragraph 6.

34. ECRI second report on Croatia, at paragraph 11.

35. ECRI second report on the Czech Republic, at paragraph 6.

in the territory. Minority groups should be fully involved in the elaboration of such provisions. Legislation, policy and practice in this area should be kept under review to ensure that provisions are consistently implemented throughout the territory of the State. ECRI recommends that supervisory mechanisms be established to ensure the implementation of relevant legal provisions.

Supervisory mechanisms

Legislation which entered into force in Sweden in April 2000 establishes the right to use the Sami, Finnish and Meänkieli languages in contacts with administrative authorities and in courts of law. Sweden recognises five national minority languages. ECRI recommended the establishment of a supervisory mechanism to ensure compliance with relevant provisions.³⁶

In the case of certain member States which were formerly part of the USSR – for example Latvia, Ukraine and Estonia – the authorities have introduced measures to establish and promote the national language as the sole language for certain administrative procedures and employment in the public sector. As regards employment in the private sector, legislative measures providing that employees must have a command of the State language where a “legitimate public interest” exists have been introduced. ECRI encourages States to monitor the operation of such legislative provisions in the private sector in order to ensure that their application is strictly limited to situations where a “legitimate public interest” is clearly established.³⁷ In addition, lessons in the official language should be provided free of charge and should be easily accessible.³⁸

(d) Culture

ECRI supports the introduction and retention of legal provisions guaranteeing members of national, ethnic or other minority groups the freedom to maintain and develop their customs and traditions. Typically, such provisions may include establishing the right of minority groups to establish cultural institutions, cultural autonomy and to participate in the resolution of matters connected with their cultural identity.³⁹

Cultural autonomy

In Estonia, legislation sets out the right of “individuals belonging to a national minority to establish cultural autonomy in order to achieve the cultural rights given to them by the Constitution”. ECRI has urged the authorities to develop this legislation and ensure its implementation in the interests of protecting the culture and identity of Estonia’s minority groups.⁴⁰

(e) Religion

ECRI supports provisions guaranteeing freedom of faith and religion for all. Any provisions restricting this freedom must not exceed the limits set out in Article 9 of the European Convention on Human Rights, which provides that any such limitations must be prescribed by law and necessary in a democratic society. In particular, ECRI

36. ECRI second report on Sweden, at paragraphs 8-10.

37. See, for example, ECRI second report on Latvia, at paragraph 48.

38. ECRI second report on Estonia, at paragraph 14.

39. See, for example, ECRI second report on Poland at paragraph 5.

40. ECRI second report on Estonia, at paragraph 16.

encourages member States to undertake measures to ensure that all religious groups can apply for registration of their status and that such measures are implemented without discrimination.⁴¹

Registration of religious groups

In Armenia, the Jehovah's Witnesses were refused registration as a religious organisation, on the grounds that their general refusal to perform military service was contrary to the Constitution and national legislation. ECRI encouraged the authorities to fulfil an outstanding undertaking to introduce 'alternative service' provisions for conscientious objectors in the interests of resolving this difficulty.⁴²

(f) Political parties

The existence of political parties and organisations which incite and support racial, religious, regional or ethnic hatred is prohibited in constitutional provisions and other legal provisions in several member States, including Albania⁴³ and Ukraine.⁴⁴ ECRI is broadly supportive of such measures. However, ECRI encourages States to ensure that restrictions on the establishment and operation of political parties do not infringe upon the right of minority and other groups to establish political parties or discriminate against legitimate political groupings.⁴⁵

c) Criminal Law

ECRI monitors the operation of the criminal law in member States with a view to ensuring that its provisions are both adequate and implemented effectively. As a general guide to ensuring best practice in this area, ECRI has elaborated standards concerning substantive legal provisions, implementation, the role of prosecution authorities, law enforcement agencies and third parties, training, awareness raising and data collection, which should be followed by all member States. These standards are described below.

i. Substantive provisions

In accordance with its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, ECRI encourages member States to ensure that their criminal law provisions include adequate incitement to hatred legislation, define common offences of a racist or xenophobic nature as specific offences and consider racist motivation as an aggravating circumstance when sentencing.⁴⁶

The substantive provisions of the criminal law in members States in this area typically cover: incitement to hatred, genocide, discriminatory practices in the public and private sector, racist or xenophobic defamation or insults, the establishment of racist organisations, destruction of religious sites and the desecration of graves.

41. ECRI second report on Bulgaria, at paragraph 8.

42. ECRI second report on Armenia, at paragraphs 13-14.

43. ECRI second report on Albania, at paragraph 3.

44. ECRI second report on Ukraine, at paragraph 8.

45. See, for example, ECRI second report on Bulgaria, at paragraph 6.

46. For further information on this General Policy Recommendation, see section II B 2 (g).

At a minimum, ECRI urges all member States to include a prohibition of incitement to national, racial or religious hatred or intolerance within the criminal law. ECRI further recommends that legal provisions concerning incitement to hatred should address the common manifestations of racism and intolerance experienced in a particular State.⁴⁷ Additional recommendations concerning the content of criminal law provisions are set out in ECRI's General Recommendation No. 7, including, for example, the recommendation that the criminal law should penalise the expression of ideologies which aim to depreciate or denigrate a grouping of persons.

As regards the scope of the prohibition, States should ensure that it applies to all relevant media including audio-visual and electronic. In addition, States should ensure that criminal law provisions in this area apply to all persons present on their territory and not only to citizens.⁴⁸

ECRI has noted that the criminal law provisions of many member States do not define common offences of a racist or xenophobic nature as specific offences or consider racist motivation as an aggravating circumstance when sentencing. ECRI strongly recommends the introduction of such provisions in order to ensure the consistent and systematic prosecution and sentencing of offences of a racist nature.

In some member States, the criminal law extends only a discretionary power to the courts to decide whether or not to consider racist motivation as an aggravating circumstance for offences.⁴⁹ ECRI encourages member States to replace discretionary provisions with strict legal measures providing for specific offences and requirements as regards sentencing.

Specific offences and sentencing

In the United Kingdom, in 1998, legislation was introduced which created new offences of racially aggravated violence and harassment and gave statutory force to case law requiring judges to consider evidence of racist motivation for any offence as an aggravating factor in sentencing. ECRI recommended that the UK authorities take a further step and introduce a legal provision "requiring the prosecuting authority to place before the courts any evidence tending to show that a specific offence has been committed on racial grounds"⁵⁰

Member States should ensure that the penalties provided for in the criminal law are sufficient so as to provide a deterrent effect. In particular, the effect of fines imposed on service providers such as bars and restaurants should be to dissuade them from continuing discriminatory practices such as refusing access to members of specific groups.⁵¹

In accordance with its General Policy Recommendation No. 7,⁵² ECRI supports the inclusion within the criminal law of a prohibition on the establishment, support of, or

47. See, for example, ECRI second report on Latvia, at paragraph 24.

48. ECRI second report on Ukraine, at paragraph 16.

49. See, for example, ECRI second report on Portugal, at paragraph 11.

50. ECRI second report on the United Kingdom, at paragraph 8.

51. ECRI second report on Finland, at paragraphs 7-8.

52. See Section II B 2 (g) concerning ECRI's General Policy Recommendation No. 7.

participation in, groups which promote racism.⁵³ ECRI considers that such measures send a clear signal that the behaviour of such groups will not be tolerated. However, ECRI urges member States to ensure that such provisions are not used to restrict the establishment of ethno-cultural or linguistic associations set up to facilitate the expression of cultural identity by minority groups.⁵⁴

ECRI notes that the prohibition of discrimination in relation to the exercise of rights and the provision of services is dealt with by some member States in criminal law provisions and by others in civil law provisions. ECRI encourages member States to ensure that criminal law provisions are supplemented by an adequate parallel body of civil anti-discrimination legislation addressing matters that may fall outside of the ambit of the criminal law.⁵⁵

ii. Implementation

In its second round reports on member States, ECRI noted a general lack of implementation of criminal law provisions concerning racist crime, despite reports of widespread incidents of racially-motivated crime and discrimination. To effectively counter non-implementation of legal provisions, ECRI encourages member States to actively review the implementation of criminal law provisions in this area.

In particular, the number of prosecutions brought under incitement to hatred legislation and other provisions relating to offences of a racist nature should be monitored. Where this number is low, States should examine possible reasons for the lack of prosecutions. Such an examination might include an assessment of "the actual extent of racial discrimination and racial insults and harassment within society and the attitudes of the police, prosecutors and courts in receiving and dealing with complaints".⁵⁶

The practical application of legal provisions should also be examined. In particular, the clarity, adequacy and enforcement of the legal provisions in place should be assessed. As regards enforcement, member States should ensure that the high standard of proof required for criminal offences, and the application of any procedural rules attached to the prosecution of such offences, do not frustrate the prosecutions or the securing of convictions.

Standard of proof

In Sweden, ECRI noted that the number of convictions secured under criminal law provisions prohibiting discrimination was very low. This was partly due to the high standard of proof required to establish a specific intent to discriminate. ECRI encouraged the Swedish authorities to introduce civil law provisions, where standards of proof are lower, in order to ensure that anti-discrimination provisions could be implemented effectively.⁵⁷

53. ECRI second report on Luxembourg, at paragraph 8 (see also ECRI second report on Italy, at paragraph 11).

54. ECRI second report on Turkey, at paragraph 8.

55. See section II A 2 (d) on Civil and administrative law below.

56. ECRI second report on Iceland, at paragraph 11.

57. ECRI second report on Sweden, at paragraphs 18 – 19 (see also, ECRI second report on Ireland, at paragraph 11 and ECRI second report on Denmark, at paragraph 6).

Procedural rules

In France, ECRI expressed concern that the procedural rules for the prosecution of incitement to hatred, slander and libel offences were overly strict. ECRI encouraged the French authorities to introduce legislative reform aimed at ensuring that such offences could be effectively prosecuted.⁵⁸

iii. Prosecution authorities

ECRI has elaborated a number of recommendations regarding the role of prosecution authorities in ensuring the implementation of criminal law in this area. First, where the decision to prosecute offences of a racist nature lies within the discretion of the public prosecutor, ECRI encourages the authorities to place an obligation on the public prosecutor to publish his/her reasons for not prosecuting a case. ECRI considers that such a measure will dissuade public prosecutors from not pursuing prosecutions for reasons of expediency.⁵⁹

Secondly, the authorities should actively monitor adherence to any guidelines issued to public prosecutors regarding the prosecution of offences of a racist nature.⁶⁰

Thirdly, ECRI encourages member States to enable prosecutors to pursue prosecutions of their own volition in the absence of a complaint from a victim.⁶¹

Enforcement of legal provisions

In the Netherlands, a National Discrimination Expertise Centre, attached to the public prosecution service, was established. The role of the Centre is to improve enforcement of criminal law provisions regarding racial discrimination. ECRI welcomed the establishment of the Centre and stressed the importance of its role in improving local law enforcement of criminal law in relation to discrimination.⁶²

iv. Law enforcement agencies

ECRI supports the establishment of specific units within law enforcement agencies charged with countering incidents of racially-motivated offences and the activities of racist groups. Such units should also be tasked with ensuring that offences of racist nature are identified as racist incidents and treated as such during police investigations.

Anti-racism units

In the United Kingdom, a Racist and Violent Crime Task Group was established within the London Metropolitan Police to counter racist crimes. ECRI urged the authorities to consider establishing such task groups within police forces in other parts of the country.⁶³

58. ECRI second report on France, at paragraph 6.

59. ECRI second report on the Netherlands, at paragraph 6.

60. ECRI second report on the Russian Federation, at paragraph 9.

61. ECRI second report on Greece, at paragraph 6.

62. ECRI second report on the Netherlands, at paragraph 5.

63. ECRI second report on the United Kingdom, at paragraph 10.

v. Third parties

ECRI encourages member States to enable interested third parties, such as associations and individuals to initiate civil proceedings in respect of racist incidents.⁶⁴

vi. Training

In order to promote the effective operation of the criminal law in practice, ECRI advocates the delivery of training to all actors involved in the criminal justice system including the police, prosecuting authorities and the judiciary. Such training should focus on the investigation, prosecution and sentencing of racist crimes and address the ways in which racism and discrimination manifest themselves in practice.

Training

In Spain, where ECRI found that criminal law provisions in this field are rarely applied, it encouraged the authorities to provide training to the police, prosecution authorities and judges. ECRI indicated that the aim of the training should be to ensure that the racist element of offences is taken into account at all stages of the criminal process, and to impress upon the officials concerned the need to actively counter racist offences.⁶⁵

Training and awareness raising delivered to law enforcement officers, the judiciary and members of the legal community should be focused on the need to combat institutional racism. Institutional racism has been defined as:

"the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people".⁶⁶

vii. Awareness raising

Targeted awareness raising activities aimed at the general public, officials and vulnerable groups should be undertaken. With respect to the first focus group, the authorities should express clear condemnation of any incidents of racially motivated crime and declare a resolute commitment to combat such incidents.⁶⁷ As regards officials involved in the criminal justice system, in addition to the training described above, activities should be undertaken to increase awareness and promote partnership between all agencies involved in this field.

64. ECRI second report on Greece, at paragraph 6.

65. ECRI second report on Spain, at paragraph 12 (see also, ECRI second report on the Netherlands, at paragraph 5).

66. Excerpt from the Stephen Lawrence Inquiry Report, UK, 24 February 1999, cited in ECRI's second report on the United Kingdom, at paragraph 6.

67. ECRI second report on Slovakia, at paragraph 55.

Co-operation between relevant actors

In the Netherlands, a "Partnership Training Programme" aimed at improving co-operation between the police, public prosecution service, anti-discrimination centres and municipal authorities was set up. ECRI encouraged the authorities to ensure the participation of minority groups in the programme.⁶⁸

With respect to vulnerable groups, measures aimed at encouraging victims of racist offences to come forward and lodge complaints should be undertaken. Such measures should include disseminating information concerning relevant criminal law provisions and encouraging victims to approach the police with complaints. Confidence building measures, aimed at demonstrating to minority groups that complaints will be properly handled and investigated, should be initiated.⁶⁹ Such measures might include the appointment of persons with particular responsibility for dealing with complaints of racist crime within the police force,⁷⁰ and the increased recruitment of members of minority groups into the police service.

viii Data collection

Data concerning racist incidents should be collected. The police and prosecuting authorities should set up and maintain systems of monitoring, classification and recording of racist incidents brought to their attention and the follow-up and outcome of the examination of such incidents.⁷¹ Information collected should include the number of offences reported to the police, the number of cases prosecuted, the reasons for non-prosecution and the outcome of prosecutions pursued.⁷²

As regards methodology, ECRI recommends that the following principles should apply to the collection of data. Information concerning the ethnic origin of victims should be recorded on the basis of self-identification of ethnic origin by the victim and confidentiality of the data recorded. Racist incidents should be defined as any incident which is perceived to be racist by the victim or any other person.⁷³ Finally, the police should be instructed to consider the possible racist nature of all crimes of violence reported to them as a matter of course.⁷⁴

d) Civil and administrative law

In accordance with its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, ECRI encourages all member States to adopt

68. ECRI second report on the Netherlands, at paragraph 7.

69. ECRI second report on Slovenia, at paragraph 12.

70. ECRI second report on Slovakia, at paragraph 57.

71. ECRI second report on Liechtenstein, at paragraph 14.

72. ECRI second report on Hungary, at paragraph 10.

73. ECRI second report on the United Kingdom, at paragraph 9.

74. ECRI second report on Hungary, at paragraph 10.

and maintain a comprehensive body of anti-discrimination legislation prohibiting discrimination in all fields of life.⁷⁵

In countries where discrimination appears not to be a problem, the introduction of comprehensive legislation can reveal any instances of hidden discrimination and play a preventative role as regards any future social or demographic changes.⁷⁶ In its second round reports on member States, ECRI set a number of standards which should inform the elaboration and maintenance of anti-discrimination legislation in member States. These cover substantive legal provisions, implementation, awareness raising and data collection.

i. Substantive provisions

ECRI considers that civil and administrative law should contain an express prohibition of:

- discrimination in all fields of life including employment, education, housing, health, goods and services intended for the public, access to public places, access to public and social services, contractual relations between individuals, exercise of economic activity; and
- discrimination on grounds such as: race, colour, religion, language, nationality, national and ethnic origin.⁷⁷

Anti-discrimination legislation should be country specific and should address the specific manifestations of racism and intolerance in the state concerned, ensuring, for example, that membership of vulnerable groups in the state are included in the list of 'grounds' upon which discrimination is prohibited.

Country-specific legal provisions

In its second report on Ireland, ECRI welcomed the introduction of a body of anti-discrimination legislation prohibiting discrimination in employment, education, provision of goods, services, accommodation and disposal of property. Discrimination is prohibited on nine grounds, including membership of the Traveller community, an ethnic minority group in Ireland.⁷⁸

Member States of the European Union should ensure that anti-discrimination legislation is in conformity with the EU Directive on implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and the EU Directive on establishing a general framework for equal treatment in employment and occupation.⁷⁹ These Directives require the introduction of legal provisions prohibiting direct and indirect discrimination in all fields and providing for the "sharing of the burden of proof" between

75. See Section II B 2 (g) concerning ECRI's General Policy Recommendation No. 7.

76. ECRI second report on Albania, at paragraph 9.

77. See for example, ECRI second report on Spain at paragraph 14

78. ECRI second report on Ireland, paragraphs 14-17.

79. EU Directive 2000/43/EC and EU Directive 2000/78/EC.

80. "A shared burden of proof means that the complainant should establish facts allowing for the presumption of discrimination, whereupon the onus shifts to the respondent to prove that discrimination did not take place", Explanatory memorandum to ECRI General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, at paragraph 29.

81. ECRI second report on Estonia, at paragraph 21.

alleged victims of discrimination and the accused.⁸⁰ Non EU member States should also elect to follow the standards set out in both Directives.⁸¹

Anti-discrimination legislation should apply to both the public and private sectors. ECRI encourages member States to give consideration to extending the application of such legislation to law enforcement agencies.⁸²

Scope of application of legislation

In its second report on the United Kingdom, ECRI welcomed a legislative proposal pending before Parliament which proposed to bring public authorities, including the police, within the ambit of anti-discrimination legislation.⁸³

ECRI supports the introduction of provisions within anti-discrimination legislation providing for positive action such as promotion of equality. Where a positive duty is placed on public authorities to promote equality, States should ensure compliance with such duties including through establishing adequate enforcement mechanisms.⁸⁴

Positive action

In its second report on Romania, ECRI welcomed the introduction of anti-discrimination legislation which allows for positive action "for persons and groups of persons belonging to national minorities and, for the communities of national minorities, with a view to protecting disadvantaged groups which do not enjoy equal opportunities".⁸⁵

The protection afforded by anti-discrimination legislation should apply to non-citizens and citizens alike, except where restrictions on the rights of non-citizens are justified.

Only those instances of differential treatment which have an objective and reasonable justification are considered not to be discriminatory. ECRI's position on this issue, which is based on the jurisprudence of the European Court of Human Rights, is set out in its General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination.⁸⁶ For further information concerning this Recommendation see Section II B 2 (g).

ECRI encourages States to ensure that identity documents and birth certificates do not include information regarding ethnic, religious or other minority group origin.⁸⁷

ECRI encourages States to periodically review the provisions and operation of their anti-discrimination legislation in order to ensure the continuing relevance and effectiveness of the legislation in practice.

82. ECRI second report on the Netherlands, at paragraph 12.

83. ECRI second report on the United Kingdom, at paragraph 15.

84. ECRI second report on the United Kingdom, at paragraph 18.

85. ECRI second report on Romania, at paragraph 11.

86. See ECRI General Policy Recommendation No.7, at paragraphs 1(b) and (c) and the Explanatory Memorandum to the Recommendation, at paragraph 8.

87. See ECRI second report on Georgia, at paragraph 16 and ECRI second report on Turkey, at paragraph 10.

88. ECRI second report on Lithuania, at paragraph 17.

ECRI encourages member States to view the process of adopting comprehensive anti-discrimination legislation as a positive process through which research and debate concerning the extent of direct and indirect discrimination in the State, and how to combat it, will be stimulated.⁸⁸

Any exemptions on the application of anti-discrimination legislation to legislation or ministerial orders in the immigration field should be kept under close review. Such exemptions should be reconsidered in light of any evidence that they lead to discriminatory practices.⁸⁹

ii. Implementation

Member States should ensure that anti-discrimination legislation is fully and consistently implemented throughout the jurisdiction of the State. In particular, States should ensure that the application of local or regional rules, for example concerning registration of residence, do not operate to frustrate the implementation of anti-discrimination legislation.⁹⁰

(a) Enforcement mechanisms

It is axiomatic that, in order to be effective, anti-discrimination legislation must be coupled with an effective implementation mechanism. ECRI therefore encourages member States to establish specialised bodies to combat racism and racial discrimination, with specific mandates to ensure the implementation of anti-discrimination legislation.⁹¹ In addition, ECRI encourages member States to ensure the implementation of any pre-existing civil and administrative law provisions in this field.⁹²

As regards specialised bodies, ECRI encourages member States to monitor the procedural requirements of the anti-discrimination legislation under which such bodies operate. In particular States, should take measures to ensure that, in practice, all persons have access to complaints mechanisms. Such measures might include ensuring that restrictive time limits in respect of submitting a complaint, do not apply. For further information concerning specialised bodies, see section II B 2 (b).

(b) Burden of proof

In some member States, a victim must prove that the respondent intended to discriminate against them or discriminated against them on unjustifiable grounds. ECRI urges all member States to ensure that burden of proof requirements do not operate to frustrate or impede the processing of complaints of discrimination. In particular, ECRI

89. ECRI second report on the United Kingdom, at paragraph 19.

90. ECRI second report on the Russian Federation, at paragraph 35.

91. For further information, see ECRI's General Policy Recommendation No. 2 concerning specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level. See also Section II B 2 (b) of this report, which examines General Policy Recommendation No. 2.

92. ECRI second report on Andorra, at paragraph 10.

urges all member States to make provision for the sharing of the burden of proof between alleged victims of discrimination and the accused, in line with the European Union Directives 2000/43/CE and 2000/78/CE.⁹³

Shared burden of proof

In Finland, under employment law provisions, victims must prove that the accused discriminated against them "without acceptable reason" for the difference in treatment to constitute discrimination. ECRI recommended that this burden of proof be shifted in the context of the implementation by Finland of EU Directive 2000/78/CE.⁹⁴

(c) Role of third parties

ECRI is supportive of measures which enable non-governmental organisations to bring complaints of discrimination before the national courts on behalf of victims.⁹⁵ Measures allowing representative organisations to instigate proceedings before specialised bodies on behalf of victims are also welcomed.⁹⁶

iii. Awareness raising

Awareness-raising activities aimed at promoting knowledge of the existence of anti-discrimination legislation should be undertaken. Such activities should be targeted at specific groups, including employers and employees, persons offering public services, members of the legal community and judiciary and members of minority groups.

As regards the substance of awareness raising activities – in particular, those activities targeted at actors in the employment, legal and law enforcement sectors – the nature of direct, indirect and institutional discrimination should be addressed.

Activities targeted at the general public should focus on existence of complaints mechanisms⁹⁷ and the application of comprehensive anti-discrimination legislation to relationships between individuals, for example in employment and access to public places, should also be highlighted.⁹⁸

iv. Data collection

Comprehensive statistical information concerning the application of anti-discrimination legislation in the area of civil and administrative law should be collected.⁹⁹

93. "A shared burden of proof means that the complainant should establish facts allowing for the presumption of discrimination, whereupon the onus shifts to the respondent to prove that discrimination did not take place", Explanatory memorandum to ECRI General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, at paragraph 29.

94. ECRI second report on Finland, at paragraph 10.

95. See for example, ECRI second report on Romania, at paragraph 11.

96. See for example, ECRI second report on the Netherlands, at paragraph 11.

97. ECRI second report on Slovenia at paragraph 15.

98. ECRI second report on Andorra, at paragraph 11.

99. ECRI second report on "the Former Yugoslav Republic of Macedonia", at paragraph 14.

e) Administration of justice

ECRI encourages member States to ensure that instances of discrimination do not occur at any stage during the administration of justice. As a starting point, States must ensure the existence of an independent judicial system founded on the rule of law and the enforcement of judicial decisions. As regards more specific safeguards against discrimination by actors involved in the administration of justice, ECRI has set out a number of measures which States should undertake and implement in order to prevent discriminatory practices from occurring. These include training, awareness raising, monitoring sentencing and prosecution practices, facilitating access to the justice system, ensuring consistency in the administration of justice and data collection.



"All different, all equal"

i. Training and awareness raising

Training and awareness raising activities concerning racism, intolerance, prejudice and discrimination and relevant legal provisions should be delivered to all actors involved in the administration of justice including judges, lawyers, prosecutors, the police and prison officers.

With respect to the police, officers should receive systematic and ongoing training regarding racism and discrimination and how to deal with complaints about racist and discriminatory incidents. Border and immigration officials should receive specific training on receiving immigrants and asylum seekers and informing them as to their rights and the asylum application process.¹⁰⁰

Any reports of racially-derogatory comments made by judges in the course of a case or in public should be examined and measures taken to prevent any further incidences.¹⁰¹

100. ECRI second report on Iceland at paragraph 19.

101. ECRI second report on Austria, at paragraph 10.

ii. Sentencing and prosecution practices

ECRI urges States to monitor sentencing practices and undertake measures to prevent the imposition of disproportionately harsh sentences on members of specific groups. It has suggested that such measures might include:

- delivering relevant training for judges and prosecutors;
- undertaking research into the representation of non-nationals and members of minority groups in the detainee population of States. Where such representation is disproportionately high, additional research should be undertaken to examine issues such as access for these groups to non-custodial sanctions;¹⁰² and
- ensuring that non-citizens are afforded the same rights as citizens as regards conditions for pre-trial detention.¹⁰³

Member States should monitor prosecution practices with a view to identifying any instances of disproportionate rates of prosecution of members of minority groups. Any such practices should be combated by way of training and awareness raising initiatives.¹⁰⁴

iii. Access to the justice system

ECRI recommends that member States undertake the following measures, where relevant, to ensure that all members of the public enjoy access to the justice system in practice as well as in theory:

- free legal aid should be made available to persons without means¹⁰⁵ and awareness raising activities publicising the availability of free legal aid (where available) should be undertaken, including in collaboration with non-governmental organisations working in the field;¹⁰⁶
- adequate interpretation and translation facilities should be provided for all persons without a command of the official language at all stages of proceedings, including immediate access to counsel. Awareness-raising activities should highlight the availability of such services.¹⁰⁷
- efforts should be made to promote the recruitment of members of minority groups into all institutions involved in the administration of justice.

iv. Ensuring consistency in the administration of justice

The administration of justice should be monitored in order to ensure consistent application of laws and sentencing provisions throughout the territory of member States. Such monitoring is of particular importance in member States with a federal system of government.

102. ECRI second report on Spain, at paragraph 15.

103. ECRI second report on Hungary, at paragraph 16.

104. ECRI second report on Armenia, at paragraph 23.

105. ECRI second report on the Czech Republic, at paragraph 11.

106. ECRI second report on Romania, at paragraph 20.

107. ECRI second report on Moldova, at paragraph 14.

In its second report on the Russian Federation, ECRI expressed concern that relevant decisions of the Constitutional Court, including as regards residence permits, are not adhered to by federal authorities. ECRI urged the authorities to undertake measures to ensure that decisions of the Constitutional Court which are of relevance to its mandate are followed by the relevant authorities.¹⁰⁸

v. Data collection

ECRI recommends that member States collect and retain information concerning the ethnic, minority group or national origin of all persons who come into contact with the criminal justice system. The assessment of such data can assist in the identification of any problem areas and of the measures best suited to tackle the specific problems identified.

Monitoring

In its second report on the United Kingdom, ECRI welcomed the extensive ethnic monitoring of the criminal justice system including stops/searches, arrests, cautions, homicides and deaths in custody. ECRI encouraged the authorities to further extend such monitoring throughout all stages of the judicial process.¹⁰⁹

f) Specialised bodies and other institutions

In accordance with its General Policy Recommendation No. 2, ECRI encourages States to establish specialised bodies and other institutions to combat racism and discrimination.¹¹⁰ In particular, ECRI urges member States to make provision for the establishment of such bodies in the context of the elaboration of comprehensive anti-discrimination legislation, in view of the central role which such bodies can play in implementing anti-discrimination provisions.¹¹¹

ECRI recognises that such bodies may take the form of an ombudsman, human rights commission, equality body or other institution. On occasion, ECRI has expressed a preference for the establishment of a single dedicated body charged with combating racism, discrimination and intolerance, as opposed to simply including or adding this function to the mandate of a larger body with a broad mandate to protect human rights in the State.¹¹²

In addition to the broad recommendations set out in General Policy Recommendation No. 2, ECRI has highlighted a number of operational standards regarding the work of such bodies.

108. ECRI second report on the Russian Federation, at paragraph 16.

109. ECRI second report on the United Kingdom, at paragraph 22.

110. For further information, concerning General Policy Recommendation No. 2, see section II B 2 (b).

111. ECRI second report on Italy, at paragraph 20.

112. See, for example, ECRI second report on Spain, at paragraph 18.

i. Composition, mandate and powers

In its General Policy Recommendation No. 2, concerning specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, ECRI recommends that "the composition of specialised bodies taking the form of commissions and the like should reflect society at large and its diversity". For further information concerning this Recommendation, see Section II B 2 (b) of this report.

The mandates of specialised bodies should be robust and include the power to supervise the implementation of anti-discrimination legislation, provide effective means of redress for cases of discrimination, provide legal aid and assistance to victims of discrimination and have recourse to the courts.¹¹³ Mandates should extend to combating discrimination in all fields of life.

ECRI welcomes provisions which give specialised bodies the power to make legally-binding decisions. In member States where such provisions do not exist, ECRI encourages the authorities to give consideration to enhancing the status of decision of such bodies.

Quasi-judicial powers

ECRI encouraged the Government of the Netherlands to enhance the status of decisions of the Equal Treatment Commission by requiring courts to follow the Commission's decisions in the absence of compelling reasons to the contrary.¹¹⁴

ECRI encourages member States to make provision for the exercise of a range of legally enforceable powers by specialised bodies.

Legally enforceable powers

In its second report on the United Kingdom, ECRI recommended that the following powers be conferred on the Commission for Racial Equality: the power to initiate an investigation in the absence of prior evidence of discrimination and the power to serve legally enforceable non-compliance notices on public authorities which fail to comply with their statutory duty to promote racial equality.¹¹⁵

ii. Independence and impartiality

In accordance with its General Policy Recommendation No. 2, ECRI calls on States to ensure that specialised bodies are independent of government.¹¹⁶ In practice, such bodies must be not only be independent in terms of their composition, mandate, functions, but must also be perceived as independent. Specialised bodies must be provided with adequate financial and human resources, in order to facilitate the execution of their work independent of government.

113. See, for example, ECRI second report on the Czech Republic, at paragraph 13.

114. ECRI second report on the Netherlands, at paragraph 14.

115. ECRI second report on the United Kingdom, at paragraph 27.

116. See section II B 2 (b) for further information on General Policy Recommendation No. 2.

Composition of specialised bodies

In its second report on Romania, ECRI expressed concern at reports that a proposed National Council to Combat Discrimination was to be established as an interministerial body. ECRI encouraged the authorities to consider the standards set out in General Policy Recommendation No. 2 as regards the requirement of independence of such bodies.¹¹⁷

The independence, continued existence and status of specialised bodies should be assured and enshrined in constitutional or other legislative provisions.¹¹⁸

iii. Role of specialised bodies and other institutions

(a) Supervising the implementation of anti-discrimination legislation

ECRI considers that specialised bodies have a fundamental role to play in supervising the implementation of anti-discrimination legislation. In particular, ECRI supports the establishment of complaints mechanisms as an innovative way of facilitating access to justice for persons who have experienced discrimination. ECRI also encourages national institutions with broad human rights mandates to undertake activities in the field of racism and intolerance in complementarity with other specialised bodies active in the field.

(b) Investigating complaints of discrimination

ECRI encourages member States to establish specialised bodies which can “effectively and independently monitor the situation as concerns racism and racial discrimination in a particular country and assist in providing effective means of redress to victims”. Where specialised bodies do not have any powers of investigation, member States should keep the need for such a provision under review.

The power to investigate allegations of discrimination is an important aspect of the work of quasi-judicial bodies.¹²⁰ In particular, ECRI welcomes provisions enabling specialised bodies to initiate investigations of their own volition, that is, even in the absence of a specific complaint.¹²¹

ECRI recommends that the ethnic or national origin of all complainants registering complaints of discrimination should be recorded.¹²² The aim of gathering such information is to facilitate analyses of all complaints received with a view to identifying any patterns of discrimination or possible incidents of systemic discrimination.

117. ECRI second report on Romania, at paragraph 21.

118. ECRI second report on Luxembourg, at paragraph 21.

119. ECRI second report on Spain, at paragraph 18.

120. ECRI second report on Ireland, at paragraph 24.

121. ECRI second report on Cyprus, at paragraph 13.

122. ECRI second report on “the Former Yugoslav Republic of Macedonia”, at paragraph 17.

ECRI has also recommended that specialised bodies should be in a position to award adequate remedies, including adequate compensation.¹²³

(c) Advisory and outreach role

ECRI encourages member States to mandate specialised bodies to prepare recommendations on law, proposed legislation, policy and practice both of their own volition and at the request of the authorities. In particular, ECRI welcomes the adoption of provisions obliging the authorities to seek the advice of specialised bodies on relevant matters.

Consultative role

In Hungary, ECRI expressed its support for the work of the Parliamentary Ombudsman for National and Ethnic Minorities and urged the Hungarian authorities to continue to act upon the observations and proposals of the Ombudsman in the field of legislation and policy.¹²⁴

ECRI supports the establishment of advisory groups set up; to review, and advise the authorities on the situation of vulnerable groups in society, network with representatives of minority groups and provide information and advice to non-nationals and members of minority groups. In order to ensure maximum effectiveness, ECRI recommends that the outcomes of the work of such groups and the level of participation by representatives of minority groups be kept under review.¹²⁵

(d) Awareness raising

ECRI notes that specialised bodies have a central role to play in raising awareness among the general public, official circles and minority groups of all aspects of racism and discrimination.¹²⁶ Targeted awareness raising campaigns concerning the existence of specialised bodies and complaints mechanisms should be undertaken.

Outreach work

In its second report on Estonia, ECRI welcomed the work of the Ombudsman who participated in interviews with minority language media, planned visits to different counties and established regional offices in order to raise awareness of the existence of his office.¹²⁷

Targeted materials and campaigns

In Ireland, the Equality Authority organised an Anti-Racism in the Workplace Week, and produced materials in a variety of languages and formats to highlight the existence of a new anti-discrimination legislative framework and complaints mechanism. Specifically designed materials were also prepared to raise awareness within the Traveller community, an ethnic minority in Ireland.¹²⁸ ECRI welcomed these initiatives.

123. See, for example, ECRI second report on Ireland, at paragraph 20.

124. ECRI second report on Hungary, at paragraph 25.

125. See, for example, ECRI second report on Germany, at paragraph 13.

126. ECRI second report on the Czech Republic, at paragraph 13.

127. ECRI second report on Estonia, at paragraph 24.

128. ECRI second report on Ireland, at paragraph 22.

ECRI encourages States to assign high political priority to the work of such bodies. The importance of raising awareness of the existence of specialised bodies among the general public, officials and members of the judiciary is also stressed.

iv. Co-ordination with other bodies and groups

ECRI encourages specialised bodies to ensure complementarity of action with other bodies active in the field of combating racism and discrimination, through on-going consultation and co-operation with relevant groups at local, national and international level.¹²⁹

Members of minority groups should be actively involved in any initiatives aimed at ameliorating their situation.¹³⁰

v. Conducting studies

Member States should ensure that a specialised or other independent body is tasked with carrying out research into racism and intolerance in the State.¹³¹

vi. Review of the work of specialised bodies

The performance and effectiveness of specialised anti-discrimination bodies should be kept under close and on-going review.¹³² In particular, member States should ensure that, where specialised bodies are mandated to issue recommendations to public authorities, these recommendations are implemented in practice.¹³³

g) Education/training

i. Schools

In its second report on Croatia, ECRI stated:

"Educational processes are fundamental to ensure reconciliation in a long-term perspective. It is important that schools strive to break down negative sentiments and stereotypes about other ethnic and national groups and replace them with more impartial information both about minority groups and the majority."¹³⁴

ECRI strongly recommends that member States make provision for the teaching of human rights education in schools on a compulsory basis. ECRI considers that human rights education must be delivered in a systematic fashion at all levels of education, including pre-school education, and has set out the following principles which should be incorporated into all educational systems operated by member States.

129. ECRI second report on Croatia, at paragraph 24.

130. ECRI second report on Finland, at paragraph 16.

131. ECRI second report on Luxembourg, at paragraph 19.

132. ECRI second report on Sweden, at paragraph 33.

133. ECRI second report on Georgia, at paragraph 19.

134. ECRI second report on Croatia, at paragraph 70.



Prelude to the
European Conference
against Racism,
October 2000

(a) Content and delivery of human rights / anti-discrimination education

ECRI considers that human rights education should focus on the principles of equality, non-discrimination, the notion of tolerance and respect of difference.¹³⁵ Relevant national issues should be addressed in an atmosphere which promotes respect for diversity. In particular, school curricula should reflect the culture and background of both the children being taught and the wider society in which they live.¹³⁶

As regards the national dimension of human rights education, ECRI encourages member States to pay particular attention to any specific manifestations of racism and/or intolerance in the country.

Country-specific materials

In its second report on the Russian Federation, ECRI noted that antisemitism was a persistent issue in the country and indicated that attention should be paid to this issue in the context of the development of human rights education text books and school curricula.¹³⁷

Member States should keep curricula under regular review in order to ensure compliance with ECRI's General Policy Recommendation No. 1 on combating racism, xenophobia, antisemitism and intolerance, which recommends that member States "ensure that school curricula, for example in the field of history teaching, are set up in such a way as to enhance the appreciation of cultural diversity".¹³⁸

135. ECRI second report on Azerbaijan, at paragraph 22.

136. ECRI second report on Romania, at paragraph 27.

137. ECRI second report on the Russian Federation, at paragraph 25.

138. For further information on General Policy Recommendation No. 1, see Section II B 2 (a).

ECRI encourages member States to ensure that human rights education is not treated as an isolated subject. Rather, in addition to specific human rights education lessons, human rights concepts should be incorporated into other subjects at all levels of the education system.¹³⁹

Mainstreaming human rights education

In Austria, ECRI noted that “intercultural education” takes the form of a recommendation to teachers to take relevant issues into account across all subjects. ECRI urged the authorities to ensure that all teachers received training in this regard and to monitor the application of this principle in the education delivered in practice.¹⁴⁰

ECRI urges member States to take measures to combat the perpetuation of prejudice or stereotypes in schools. Such measures might include ensuring national curriculum guidelines are adhered to by all schools nationwide.¹⁴¹ In particular, member States should monitor the integration of human rights education into teaching delivered in schools and should issue guidelines and encouragement in this connection where necessary.¹⁴²

Consistency of education delivered

In its second report on Italy, ECRI encouraged the authorities to take measures, including enhancing existing evaluation systems, to ensure that cross-disciplinary intercultural education was consistently delivered in teaching in schools throughout the country.¹⁴³

ECRI considers that any religious education lessons delivered in schools should embrace all religions. Where this is not the case, and instruction in a specific religion is delivered, children of other religious persuasions should not be obliged to attend such lessons. In addition, such lessons should promote understanding and knowledge of different faiths.¹⁴⁴

In member States where children attend separate schools for reasons of religious affiliation or language, the authorities should undertake initiatives aimed at promoting understanding between students of different backgrounds.

Developing cross-cultural contacts

In its second report on Estonia, ECRI called on the authorities to deliver lessons on cultural diversity in all schools and to “continue and expand exchanges between pupils of different schools in order to foster contacts and friendships amongst children from all groups in society”.¹⁴⁵

139. ECRI second report on Germany, at paragraph 53.

140. ECRI second report on Austria, at paragraph 15.

141. ECRI second report on Iceland, at paragraph 20.

142. ECRI second report on Spain, at paragraph 20.

143. ECRI second report on Italy, at paragraph 26.

144. ECRI second report on Malta, at paragraph 21.

145. ECRI second report on Estonia, at paragraph 27.

(b) Teacher training and teaching materials

Teachers should be provided with on-going training concerning anti-discrimination issues. Member States should ensure that human rights education is taught in teacher training institutions as a compulsory subject.¹⁴⁶ As regards methodology, teacher training should focus on encouraging teachers to use interactive and participative methods of teaching.¹⁴⁶

ECRI encourages member States to keep the content of teaching materials under review. In particular, history and other relevant textbooks used in lessons should be balanced and should reflect the contribution of minority, ethnic and other groups to the history of the State concerned. In addition, where appropriate, teaching materials should be made available in languages other than the official language and/or main language of instruction.¹⁴⁸

ECRI urges member States to ensure that teachers receive training on how to teach in a multi-cultural environment and how to deal with any incidents of racism or intolerance which may arise within schools.¹⁴⁹ This is of particular importance in member States with an emerging multi-cultural society.¹⁵⁰

(c) Combating racism and harassment in schools

ECRI notes that several member States have experienced problems of harassment, racism and intolerance amongst school children, including clashes between students from different backgrounds and students wearing items associated with extremist groups.¹⁵¹ ECRI recommends that member States take preventative measures in this connection.

Measures to combat racism in schools

In Liechtenstein, the authorities introduced a new subject aimed at improving cultural understanding between children and undertook awareness raising activities targeted at students and teachers in order to combat and prevent incidents of racism and intolerance among students. ECRI recommended that the authorities focus on primary school education in order to prevent problems from arising at secondary level.¹⁵²

ii. Justice system and public authorities

ECRI recommends that human rights training be delivered to members of the police, prison service, legal community and public officials who come into contact with non-nationals, including immigrants and asylum seekers.¹⁵³

146. ECRI second report on Spain, at paragraph 20.

147. ECRI second report on Romania, at paragraph 27.

148. ECRI second report on Latvia, at paragraph 31.

149. ECRI second report on the Netherlands, at paragraph 21.

150. ECRI second report on Cyprus, at paragraph 20.

151. See, for example, ECRI second reports on Liechtenstein at paragraph 19 and ECRI second report on Malta, at paragraph 20.

152. ECRI second report on Liechtenstein, at paragraph 19.

153. ECRI second report on Luxembourg, at paragraph 25.

As regards the police, ECRI urges member States to ensure that police officers receive systematic and on-going training regarding issues of racism and discrimination and how to handle complaints of racism and discrimination brought to their attention.

ECRI also underlines the need for specialised training for border officials dealing with non-citizens, including immigrants and asylum seekers. Training should address issues such as the reception of foreign nationals and clear guidelines on the information which should be transmitted to such persons, including information on their rights and how to apply for refugee status.¹⁵⁴

As regards the legal community and public officials, members of these professional groups should receive training on the content and application of relevant criminal, civil and administrative law provisions.

h) Awareness raising

ECRI encourages States to undertake awareness-raising activities aimed at addressing country-specific manifestations of racism and intolerance. Notwithstanding the "state-specific" nature of such activities, ECRI recommends that awareness-raising activities should include a number of common elements.

i. Aims and objectives

ECRI considers that awareness-raising activities should be aimed at achieving a change in the climate of opinion in member States, where the climate harbours negative sentiments towards specific groups or foreigners in general.¹⁵⁵ The objective of such activities should be the achievement of a genuine changing of mentalities and attitudes.

ii. Substance of awareness-raising activities

As regards the substance of awareness-raising activities, the existence of intolerance, racism and discrimination, the manner in which these phenomena operate in practice, their effects on certain groups and the need to take action to combat racism and discrimination should be highlighted.¹⁵⁶

ECRI encourages member States to ensure that awareness-raising activities do not focus solely on visible forms of racism and discrimination in the country. Rather, research should be undertaken to identify all manifestations of racism and discrimination, including indirect and hidden forms of discrimination. Such research should inform the elaboration of activities aimed at raising awareness of the actual situation in the country and the need to take action to prevent discrimination.

¹⁵⁴. ECRI second report on Iceland, at paragraph 19.

¹⁵⁵. See, for example, ECRI second report on Italy, at paragraph 39.

¹⁵⁶. See, for example, ECRI second report on Spain, at paragraph 19.

Indirect discrimination

In its second report on Azerbaijan, ECRI noted that measures and practices which appear benign may have a discriminatory effect in practice, for example, a legal provision may not, in itself, be discriminatory, but it may be applied in discriminatory fashion.¹⁵⁷

Awareness-raising activities should highlight any new legislation or policy measures introduced to combat racism and intolerance.¹⁵⁸ In addition, the history, culture and contribution of minority groups and non-citizens to society should also be identified in such activities.

(a) Challenging concepts of national identity

In member States where society is becoming increasingly diverse and multicultural, for example, as a result of immigration, the authorities should raise awareness of the features and benefits of multicultural society within society as a whole.¹⁵⁹ In particular, conventional notions relating to national identity should be explored with a view to encompassing all members of emerging multicultural societies.¹⁶⁰ In addition, any and every instance of discrimination should be highlighted and addressed, both as a matter of principle, and in order to send a message that any emergence of racism and intolerance will not be tolerated.¹⁶¹

In respect of member States where long established minority groups have been marginalised in society, ECRI encourages the authorities to undertake initiatives aimed at challenging notions that members of such groups do not fit within traditional concepts of national identity.

In its second report on the Czech Republic, ECRI called on the authorities to undertake initiatives aimed at promoting the acceptance of members of the Roma/Gypsy community as an integral part of society.¹⁶²

(b) Promoting reconciliation

In member States which have experienced intercultural conflict and tension, ECRI encourages awareness-raising activities to be undertaken as a means of promoting reconciliation and building a climate of trust.¹⁶³

In Croatia, ECRI encouraged politicians, the media and other opinion formers to give careful consideration to the manner in which recent history would be addressed and portrayed. ECRI recommended that special training be given to members of the media and public figures in this connection.¹⁶⁴

157. ECRI second report on Azerbaijan, at paragraph 48.

158. ECRI second report on Ireland, at paragraph 78.

159. ECRI second report on Finland, at paragraph 18.

160. See, for example, ECRI second report on Germany, at paragraph 50.

161. ECRI second report on Malta, at paragraph 32.

162. ECRI second report on the Czech Republic, at paragraph 45.

163. ECRI second report on Croatia, at paragraph 65.

164. ECRI second report on Croatia, at paragraph 67.

iii. Targeting specific groups

(a) Public officials

ECRI recommends that all public officials involved in public services or the administration of justice should receive information and training concerning racism and discrimination and how these phenomena manifest themselves in practice.

Awareness-raising activities targeted at public officials should seek to raise awareness of any instances of discrimination in the fields of education, housing and employment and to train officials in ways to prevent such discrimination.¹⁶⁵

Awareness-raising activities concerning any new anti-discrimination measures introduced should be aimed at civil servants, the judiciary and police officers, all of whom may be charged with the implementation of such measures. Efforts should also be made to ensure that vulnerable groups which may be in a position to benefit from any such new measures are made aware of their existence.

(b) Politicians, political groups and the media

As mentioned above, politicians and the media have a crucial role to play in influencing the general climate of opinion within States. Member States should undertake measures, including awareness-raising activities, aimed at ensuring that politicians do not support racist and intolerant views with a view to enhancing their popularity, particularly in the context of elections.¹⁶⁶

Promoting networking

In its second report on Germany, ECRI welcomed the establishment of an "Alliance for Democracy and Tolerance" by the authorities. The Alliance is aimed at enhancing networking between politicians and representatives of civil society engaged in political activities.¹⁶⁷

ECRI urges member States to undertake measures to combat the activities of extreme right wing groups, including through the implementation of legal provisions concerning incitement to hatred and other racist offences.¹⁶⁸ ECRI also encourages member States to undertake awareness raising activities aimed at condemning the activities and views espoused by such groups and preventing recruitment into such groups.

Protecting young people

In its second report on Norway, ECRI welcomed the creation of the "Exit Project" aimed at helping young people to leave extreme right wing groups.¹⁶⁹

165. ECRI second report on Slovakia, at paragraph 45.

166. See, for example, ECRI second report on Germany, at paragraph 50.

167. ECRI second report on Germany, at paragraph 50.

168. See section II A 2 (p) (ii) below.

169. ECRI second report on Norway, at paragraph 56.

(c) Minority groups

ECRI encourages member States to target awareness-raising activities at minority and other groups with a view to informing such groups about their rights and about any redress mechanism of which they can avail to register complaints of discrimination. In addition, ECRI encourages member States to undertake initiatives aimed at encouraging members of minority groups to participate fully in national society.

Encouraging participation in society

In its second report on the Czech Republic, ECRI recommended that the authorities undertake efforts to raise awareness within the Roma/Gypsy community of the need to participate more actively in society, highlighting, in particular, the need to acquire citizenship and ensure their children receive regular education.¹⁷⁰

Information campaigns concerning minority groups should also be targeted at the general public, with the aim of dispelling any misapprehensions concerning such groups, highlighting their contribution to society and promoting integration.

iv. Bolstering awareness-raising activities

ECRI encourages member States to ensure that all activities aimed at highlighting and combating racism and intolerance receive high political priority and support. In particular, support for such activities should be twinned with strong official condemnation of any incidents of racism and discrimination. The message that racism and discrimination will not be tolerated should be delivered both through political leadership on the issue and targeted awareness-raising campaigns.¹⁷¹

Role of politicians

In its second report on Romania, ECRI stressed that "politicians have a responsibility not just to avoid using racist or intolerant rhetoric on their own part, but also to speak out consistently and publicly against such rhetoric when it occurs and to acknowledge the existence of intolerance and discrimination as problems which need to be addressed".¹⁷²

ECRI also considers that religious organisations have a role to play in building a climate of opinion which embraces religious diversity. ECRI therefore encourages larger religious organisations in member States to give public support to the notion of religious diversity.¹⁷³

v. Collaboration with civil society

Member States should seek to undertake awareness-raising activities in collaboration with non-governmental organisations and other local partners in order to enhance the credibility of such activities.¹⁷⁴ Civil society organisations should be involved in the

170. ECRI second report on the Czech Republic, at paragraph 47.

171. See, for example, ECRI second report on Georgia, at paragraph 52.

172. ECRI second report on Romania, at paragraph 58.

173. ECRI second report on Croatia, at paragraph 66.

174. See, for example, ECRI second report on the Russian Federation, at paragraph 24.

elaboration and implementation of such activities. In particular, ECRI stresses that representatives of minority or other groups should be closely involved in the elaboration of any initiatives concerning themselves.¹⁷⁵



European Youth Train

Member States should also support civil society initiatives in the fields of research and awareness raising and should ensure that such activities inform official policy development.¹⁷⁶

vi. Impact assessment

ECRI encourages member States to regularly assess the impact of awareness-raising activities and adjust or extend such activities as required.¹⁷⁷

i) Reception and status of non-citizens

ECRI works to ensure that legislation, practice and policy in member States, relating to immigration, asylum and the status of non-citizens, respect the prohibition of non-discrimination and promote societal integration. While recognising the country-specific nature of reception and status of non-citizens issues and the right of member States to control their borders, ECRI has elaborated a number of common principles which should be followed in this field.

i. Immigration legislation

The principle of non-discrimination should be enshrined in immigration legislation, and provisions for the granting of refugee or asylum status should be formalised in the

175. See, for example, ECRI second report on the Czech Republic, at paragraph 48.

176. ECRI second report on Spain, at paragraph 19.

177. ECRI second report on Austria, at paragraph 14.

constitution or national law in accordance with international standards including the 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol.¹⁷⁸

The application of non-discrimination provisions in immigration laws should not be narrowed by restrictive regulations concerning their implementation. Similarly, any areas of discretion allowed for by legislation should not result in arbitrary or discriminatory practice.¹⁷⁹

Law on regularisation

ECRI is concerned that opportunities provided under law for resident illegal aliens to become regularised can be curtailed by administrative rules on implementation. It has urged the French authorities to ensure that any instructions concerning the practical effect of the law on regularisation are in line with the spirit of the law and do not contain provisions which unnecessarily restrict regularisation.¹⁸⁰

ii. Illegal immigration

ECRI encourages national authorities to increase transparency in the handling of individual cases at border controls, including by working closely with UNHCR officials and local NGOs.¹⁸¹

Different categories of illegal immigrants, for example, economic migrants or women being trafficked into prostitution, should be dealt with in a manner appropriate to their situation.¹⁸²

While recognising the need to combat trafficking in human beings, ECRI encourages member States to ensure that any measures to combat trafficking do not compromise the integrity of the asylum determination process. In particular, the right of persons to seek asylum must not be frustrated by measures such as carrier liability sanctions or practices such as extra-territorial interception of “would be” asylum seekers.

All officials who deal with illegal immigrants should receive special training, especially in the areas of human rights and tolerance.

Human trafficking law

In Italy, the law provides for the issuing of a “special temporary residence permit” for victims of human trafficking, and an Inter-ministerial Commission has been established to manage funds for local initiatives designed to counter such trafficking.¹⁸³

iii. Asylum determination procedures

ECRI encourages member States which have not already done so to establish a comprehensive infrastructure to process asylum applications and to provide assistance for asylum seekers and refugees.

178. ECRI second report on Iceland, at paragraph 24.

179. ECRI second report on Switzerland, at paragraph 32.

180. ECRI second report on France, at paragraph 13.

181. ECRI second report on Slovenia, at paragraph 27.

182. ECRI second report on Croatia, at paragraph 31.

183. ECRI second report on Italy, at paragraph 33.

As regards the operation of asylum determination procedures, officials charged with assessing applications for asylum should receive thorough training in human rights, cultural sensitivity and issues of racism and discrimination. Asylum determination procedures should operate in a manner which respects the various cultural backgrounds and experiences of asylum seekers. For example, as regards gender-related issues, female interpreters and interviewers should be provided where appropriate.

Authorities should ensure that the need to process claims quickly does not prevent applications from receiving in-depth and careful consideration.¹⁸⁴

Appeals to the court in respect of asylum applications should have "suspensive effect" which means that until a final determination is made in the case, the appellant should not be deported.¹⁸⁵

Delays in the Appeals Process

ECRI has highlighted that the processing time for asylum applications in Estonia can be approximately two years, partly due to an appeal system which refers all appeals back to the authority of first instance. ECRI considers that such long delays are undesirable and urges that a system be established under which a second-instance body can make a final determination on appeals against a negative decision.¹⁸⁶

iv. Detention and deportation of asylum seekers and non-citizens

ECRI emphasises that the holding of asylum seekers in detention should be avoided to the greatest extent possible, particularly in the case of persons arriving with families, and that the freedom of movement of asylum seekers should be assured wherever possible.¹⁸⁷

ECRI has elaborated a number of safeguards which should be followed by member States which engage in the detention and/or deportation of asylum seekers.

Authorities should offer international bodies and non-governmental organisations regular access to detention centres.¹⁸⁸

Measures should be put in place to ensure that asylum seekers are not detained pending deportation for indefinite periods of time. Where a deportation cannot be carried out, measures should be taken to regularise the situation of a person concerned.

Member States must ensure that the principle of non-refoulement is respected in all cases including, in particular, as regards the operation of any accelerated asylum determination procedures. The operation of deportation procedures and practices should be closely monitored, and special training should be delivered to any law enforcement officers and other officials involved in this area.

184. ECRI second report on Portugal, at paragraph 31.

185. ECRI second report on Portugal, at paragraph 30.

186. ECRI second report on Estonia, at paragraph 31.

187. ECRI second report on Malta, at paragraph 19.

188. ECRI second report on Luxembourg, at paragraph 40.

Detained asylum seekers

ECRI has expressed concern about the detention of asylum seekers in the United Kingdom, where although mostly charged with no criminal offence, many are reportedly held in prisons. Asylum seekers can be detained at any time, for any reason and with no time limits. ECRI emphasises that asylum seekers should not be treated as criminals.¹⁸⁹

v. Accommodation and provision for asylum seekers

Accommodation provided should be of a satisfactory standard. The location of accommodation should be sufficiently proximate to population centres in order to avoid the isolation of asylum seekers and to facilitate access to medical and other services.

Cultural sensitivity should be demonstrated with respect to the provision of meals, medical and other services. Adequate financial and linguistic assistance should be provided in order to ensure full access to medical, legal and other services. Free legal assistance should be available to assist individuals to make a valid asylum application.¹⁹⁰

Accommodation for asylum seekers

In certain cases, asylum seekers in Slovenia are accommodated in the same centre as illegal immigrants, which ECRI considers will curtail the freedom of movement of asylum seekers and lead to confusion about their status within the surrounding community.¹⁹¹

vi. Non-citizens status

In certain member States the law provides for a special legal status of “non-citizen”, which may include those who have lived in the host country without official legal status or passports for most, if not all, of their lives.¹⁹² ECRI works to ensure that such “non-citizens” are not subject to discrimination on the grounds of their status. In particular, ECRI recommends that any unjustified restrictions placed on the exercise of rights by non-citizens be removed. Where such “non-citizens” have been resident in a country for most or all of their lives, ECRI recommends that they be afforded citizenship through facilitated procedures.

Long-term residents without legal status

Long-term residents in Azerbaijan without legal status, many of whom are Afghan men married to Azerbaijani women, often with children, include those who do not possess personal documentation or cannot prove their marriage. Despite deep connections in the community and families ties, such individuals are particularly vulnerable, including to deportation. ECRI urges that all foreigners who are long-term residents should be able to secure citizenship.¹⁹³

189. ECRI second report on the United Kingdom, at paragraph 63.

190. ECRI second report on Sweden, at paragraph 40.

191. ECRI second report on Slovenia, at paragraph 25.

192. Examples include Latvia and Azerbaijan.

193. ECRI second report on Azerbaijan, at paragraph 26.

vii. Integration strategies

ECRI encourages member States which have not already done so to adopt comprehensive integration strategies aimed at the integration of immigrants, refugees, asylum seekers and other non-citizens. Such strategies should include the provision of language training and support for any relevant local initiatives already underway. The participation of non-citizens in the elaboration and delivery of such strategies should be sought. As regards employment, in the light of the specific situation pertaining member States, ECRI has encouraged certain States to give consideration to permitting the lawful employment of asylum seekers in the State.¹⁹⁴

Similarly, ECRI believes that the full and effective integration of non-citizens in society can be improved by according them some political rights, including the right to vote in local elections.¹⁹⁵

Integration strategies are particularly important in the areas of economic and community life, health care and education, and special measures should be foreseen for vulnerable groups such as single women, one-parent families and unaccompanied minors.¹⁹⁶

At the same time, it is important that immigrant communities are not systematically isolated from members of their own community, including by dispersing new arrivals throughout the country.¹⁹⁷

Awareness-raising initiatives can be undertaken to demonstrate the benefits of citizenship and stimulate the integration of refugees as fully-functioning and accepted members of society.¹⁹⁸

Family support programme

The Icelandic Red Cross in co-operation with the Refugee Council of the Ministry of Social Affairs operates a family support programme where Icelandic families volunteer to assist refugees, who are granted work permits and assisted in finding jobs. Under the programme, refugees are also granted free accommodation, health care, a stipend and language training. ECRI recommends that such programmes be expanded and placed on a more formal basis.¹⁹⁹

viii. General climate concerning non-citizens

In a number of member States, the general climate towards non-citizens can be very harsh. This climate is often reinforced by the propagation of negative stereotypes and inflammatory political rhetoric, circulated by the media. ECRI emphasises that public figures and political parties bear a particular responsibility to promote tolerance and respect for different cultures. In some countries covered by ECRI,

194. See ECRI second report on Ireland, at paragraph 41.

195. ECRI second report on Germany at paragraph 17.

196. ECRI second report on Romania, at paragraph 31.

197. ECRI second report on Denmark, at paragraph 20.

198. ECRI second report on Armenia, at paragraph 34.

199. ECRI second report on Iceland, at paragraph 21.

200. ECRI second report on Italy, at paragraph 39.

the rise of extreme right wing political parties has a deleterious effect on the public's reception of immigrants.

Irresponsible political rhetoric

Political debate in Austria about non-EU citizens, including immigrants, asylum-seekers and refugees has contributed to a markedly negative climate. The widespread use of stereotypes and misrepresentations about these groups, notably by certain political parties, has played a large part in the creation of this problem. ECRI has indicated that it is essential to avoid such a climate in the elaboration of policy and legislation, as such hostility can easily spill over into intimidation and the threat of violence.²⁰¹

j) Access to public services

ECRI works to ensure that all persons residing in a country have equal access to public services and public places. Clearly, the measures which are required to facilitate such access differ from country to country. However, ECRI has elaborated the following general standards and principles, adherence to which should facilitate equal access for all public services.

i. Legislative and other measures

ECRI encourages member States to ensure that a comprehensive body of anti-discrimination legislation addressing, *inter alia*, access to public services is adopted and enforced.²⁰² In particular, member States should ensure that non-citizens and persons without residence permits or other documentation are not refused access to public services.²⁰³

Legislative provisions should apply to public services provided by both the public and the private sector. As regards, more particularly, the public sector, ECRI recommends that member States take measures to ensure the implementation of relevant legislative provisions including at local level. Such measures might include: issuing guidelines to all relevant officials regarding relevant legislation and taking sanctions against officials who fail to apply legislative provisions, misuse provisions or apply them in a discriminatory fashion.²⁰⁴

Member States should also ensure that members of minority groups who participate in the delivery of public services are closely involved in any decisions taken concerning them as a group.

ii. Housing

In accordance with its General Policy Recommendation No 1 on combating racism, xenophobia, antisemitism and intolerance, ECRI calls on member States to initiate research into discriminatory practices and barriers or exclusionary mechanisms in public

²⁰¹ ECRI second report on Austria, at paragraph 21.

²⁰² See sections II A 2 (b) and (d) of this report for further information concerning legislative measures.

²⁰³ See ECRI second report on the Russian Federation, at paragraphs 30-32 and ECRI second report on Croatia, at paragraph 32.

²⁰⁴ See, for example, ECRI second report on Luxembourg, at paragraph 41.

and private sector housing.²⁰⁵ ECRI also encourages member States to set up a system of monitoring to identify any discriminatory practices and develop measures to end those practices.²⁰⁶

As regards the private sector in particular, the general public should be informed that provisions prohibiting discrimination, for example in relation to the rental of private property, apply to the private sector.²⁰⁷ ECRI encourages States to take measures to prevent the emergence of segregation in the housing sector, while paying due respect to the wish of members of minority groups to choose to live together with other members of their group.

Combating segregation

In its second report on Sweden, ECRI encouraged the authorities to examine the contribution of social disadvantage or discrimination against minority groups to segregation in residential housing.²⁰⁸

Member States should ensure that members of minority groups are closely involved in decision making at local level concerning housing.²⁰⁹

iii. Access to public places

ECRI encourages member States to ensure that access to public places is guaranteed for all. Legal provisions prohibiting discriminatory practices in this connection should be adopted and implemented in full.²¹⁰ The authorities should clearly state that refusing access to public places on discriminatory grounds is unacceptable and awareness-raising activities targeted at proprietors of venues such as bars and clubs should be carried out.²¹¹

iv. Access to health services

ECRI encourages member States to ensure that members of linguistic minorities and persons without residence permits do not experience difficulties in accessing public services such as health and housing.²¹²

Awareness raising and recruitment

In its second report on Norway, ECRI urged the authorities to undertake pro-active measures to facilitate access to health services by members of minority groups including providing information about the availability of services in minority languages and recruiting staff from minority groups.²¹³

²⁰⁵ See section II B 2 (a) for further information concerning General Policy Recommendation No. 1.

²⁰⁶ ECRI second report on Germany, at paragraph 24.

²⁰⁷ See, for example, ECRI second report on Luxembourg, at paragraph 42.

²⁰⁸ ECRI second report on Sweden, at paragraph 45.

²⁰⁹ ECRI second report on the Czech Republic, at paragraph 40.

²¹⁰ See sections II A 2 (b) and (d) of this report for further information concerning recommended legal provisions.

²¹¹ ECRI second report on Malta, at paragraph 22.

²¹² ECRI second report on Turkey, at paragraph 17.

²¹³ ECRI second report on Norway, at paragraph 27.

v. Training

ECRI recommends that training be provided for all officials who come into contact with members of minority or other groups or non-citizens.²¹⁴

vi. Targeting marginalised groups

The provision of social services should be monitored in order to ensure that access for all to such services is guaranteed. In particular, the situation of national, ethnic and other minority groups should be kept under review.

Where a particular group experiences difficulties in accessing social services, baseline data and research concerning the situation of the group concerned should be undertaken.²¹⁵ Such research should also examine any instances of multiple identity discrimination, including on grounds of gender or disability. This information should then inform strategic and targeted initiatives aimed at ensuring equal access to services by the group in question.

Targeting of financial resources

In Lithuania, ECRI welcomed the adoption of a "Programme for the Integration of the Roma into Lithuanian Society 2000-2004", which, *inter alia*, envisaged the allocation of funding to address the specific health problems of the Roma/Gypsy community. ECRI encouraged the authorities to implement this and other measures aimed at improving access to public services.²¹⁶

ECRI recommends that member States actively include members of minority groups in the management of public services, for example, participation on local health and accommodation boards.²¹⁷ ECRI also encourages member States to undertake targeted activities aimed at raising awareness amongst members of minority groups of their rights as regards access to public services such as health and housing.²¹⁸

vii. Access to education

States should ensure that adequate provision is made for the education of members of minority groups. Legislation, policy and practice in this field should be kept under review in order to ensure that the standard of education delivered to minority groups in practice is equivalent to that delivered to members of the majority population. ECRI has elaborated the following standards aimed at ensuring equal access for all to education.

(a) Prevention of discrimination in schools

Safeguards should be put in place to prevent discrimination against members of national minority, ethnic or other groups. Teachers working with children from minority

²¹⁴ ECRI second report on Luxembourg, at paragraph 41.

²¹⁵ All data collection and research activities should pay due respect to the principle of confidentiality and the voluntary self-identification and communication of personal data on the part of the persons concerned.

²¹⁶ ECRI second report on Lithuania, at paragraph 60.

²¹⁷ ECRI second report on the Netherlands, at paragraph 33.

²¹⁸ ECRI second report on Italy, at paragraph 42.

groups should receive specialised training and sanctions should be imposed in respect of any instances of discrimination which occur.

(b) Integration of students from minority backgrounds

ECRI welcomes regulations which provide that all children of school age must be enrolled in school, irrespective of their parents' status.²¹⁹ ECRI also encourages member States to take measures to facilitate the integration of non-citizen children or children from minority groups into the school system.²²⁰

Intercultural mediators

In its second report on Luxembourg, ECRI welcomed the fact that the authorities had appointed intercultural mediators from the countries of origin of the children of asylum seekers in order to facilitate contact between teachers, families and children.²²¹

ECRI encourages member States to take measures to prevent the emergence of de facto segregation in schools. Such measures might include supporting local schools and encouraging parents from all backgrounds to send their children to their local schools and ending any discriminatory practices which may operate to exclude certain groups from particular schools.²²²

Member States should ensure that children from linguistic minorities do not end up attending "special needs classes" or classes of an inappropriate level simply because they are not fluent in the official language.²²³ Such measures might include providing preparatory lessons in the official language to non-mother tongue students in advance of their entry in the school system.²²⁴

Preparatory courses

In the Czech Republic, in areas with a high population of Roma/Gypsies, the authorities run year-long educational programmes to prepare disadvantaged children for entry into the school system.²²⁵

Member States should ensure that members of minority groups are closely involved in their children's education; parents should be encouraged to participate in making decisions concerning their children and should be made aware of the importance of mainstream education for their children's future.²²⁶

(c) Linguistic issues

ECRI encourages member States to ensure that discrimination against members of linguistic minorities does not occur. In particular, ECRI recommends that States

²¹⁹ ECRI second report on Luxembourg, at paragraph 44.

²²⁰ See, for example, ECRI second report on Spain, at paragraph 32.

²²¹ ECRI second report on Luxembourg, at paragraph 46.

²²² ECRI second report on the Netherlands, at paragraph 27.

²²³ See, for example, ECRI second report on Slovenia, at paragraph 31.

²²⁴ ECRI second report on "the Former Yugoslav Republic of Macedonia", at paragraph 27.

²²⁵ ECRI second report on the Czech Republic, at paragraph 34.

²²⁶ ECRI second report on the Czech Republic, at paragraph 37.

undertake a two-pronged approach to this issue: on the one hand, providing specialised teaching of the national language as a second language to such students, and, on the other, providing instruction in minority languages for students of a mother-tongue other than the national language.

As regards the first approach mentioned above, ECRI recommends that States encourage educational institutions to provide specialised teaching of the national language as a second language.

Training in official languages for non-mother tongue speakers

In its second report on Iceland, ECRI welcomed the fact that, by law, students with mother tongue languages other than Icelandic are entitled to special tuition in Icelandic. In the capital, "reception classes" for children of immigrant origin are provided.²²⁷

As regards the second approach mentioned above, where there is sufficient demand, ECRI encourages member States to adopt and maintain legal measures providing for instruction in minority languages in schools and universities.²²⁸ Member States should ensure that such measures are applied consistently throughout the country and that the quality of the instruction provided is adequate.²²⁹ In addition, ECRI encourages member States to provide instruction in mother tongue languages to non-national children, for example immigrant children.²³⁰

In this connection, ECRI encourages member States to undertake measures to promote and maintain minority languages. Such measures might include: training mother tongue teachers, maintaining schools which offer instruction in national minority languages and developing, and ensuring the provision of textbooks written in national minority languages.²³¹

In order to guard against the possible segregation of students from different linguistic backgrounds, ECRI encourages schools to provide bi-lingual classes incorporating relevant minority languages as a means to enhance interaction between children of majority and minority groups.²³²

(d) Positive measures

ECRI has noted that some member States have introduced positive measures aimed at promoting access for members of minority groups to the educational system.

Quota system

In its second report on Armenia, ECRI noted with approval that the authorities had established a quota system aimed at guaranteeing access for members of certain national minorities to higher education.²³³

²²⁷ ECRI second report on Iceland, at paragraph 30.

²²⁸ ECRI second report on Latvia, at paragraph 46.

²²⁹ ECRI second report on Romania, at paragraph 33 and ECRI second report on Armenia, at paragraph 43.

²³⁰ See, for example, ECRI second report on Slovenia, at paragraph 31.

²³¹ ECRI second report on Armenia, at paragraph 45.

²³² ECRI second report on "the Former Yugoslav Republic of Macedonia", at paragraph 26.

²³³ ECRI second report on Armenia, at paragraph 44.

In accordance with its General Policy Recommendation No. 3 on combating racism and intolerance against Roma/Gypsies, ECRI encourages member States to make special efforts to encourage children from the Roma/Gypsy community to attend schools.²³⁴ ECRI also encourages member States to provide special assistance, including financial assistance, to less well off children in order to facilitate their full participation in schooling.²³⁵

(e) Recruitment and training²³⁶

Efforts should be made to recruit or increase recruitment of members of minority groups into the teaching profession.²³⁷ ECRI encourages member States to set targets regarding the recruitment of members of minority groups and to take measures to retain such individuals within the profession.²³⁸

ECRI encourages relevant member States to ensure that teachers are provided with adequate training in teaching minority languages and in teaching the official language to non-mother tongue speakers.²³⁹

Specialised linguistic training

In its second report on Latvia, ECRI welcomed the work of the "National Programme for Latvian Language Training", which was designed by the United Nations Development Programme at the request of the Latvian Government. The Programme focussed on training teachers in bilingual teaching and teaching Latvian as a second language, adults' language training and developing teaching material.²⁴⁰

(f) Flexibility of legal provisions

Legal and administrative education provisions should be sufficiently flexible to provide for the needs of nomadic children and other children or adults who may have missed out on education. For example, part-time school attendance, education at home and distance learning should be facilitated.²⁴¹

School ID Cards

In its second report on Portugal, ECRI welcomed the introduction of "School ID Cards" which enable children of nomadic families to attend any school by obliging schools to admit such children at the grade level indicated on the ID card.²⁴²

²³⁴ ECRI second report on Albania, at paragraph 21. For further information on General Policy Recommendation No. 3, see Section II b 2 (c).

²³⁵ ECRI second report on Albania, at paragraph 23.

²³⁶ See section II A 2 (g) for further information concerning education and training.

²³⁷ ECRI second report on Austria, at paragraph 23.

²³⁸ ECRI second report on the United Kingdom, at paragraph 33.

²³⁹ ECRI second report on "the Former Yugoslav Republic of Macedonia, at paragraph 26.

²⁴⁰ ECRI second report on Latvia, at paragraph 76.

²⁴¹ See, for example, ECRI second report on Romania, at paragraph 35.

²⁴² ECRI second report on Portugal, at paragraph 38.

(g) Research regarding the situation of minority groups

ECRI recommends that, where members of particular groups underperform in the educational system, research assessing their situation *vis-à-vis* the system should be carried out.²⁴³ In particular, statistics identifying the involvement, achievements and progress of students from minority groups should be collected. ECRI further recommends that targets should be set regarding the levels of attainment of students from minority groups and that monitoring of racist incidents, school exclusions and harassment should be carried out.²⁴⁴

Targeting specific groups

In its second report on the Netherlands, ECRI noted with approval that the authorities had adopted a “Higher Education and Research Plan” which aimed to improve the situation of ethnic minority students, reduce drop-out rates and improve access to university education.²⁴⁵

(h) Issues regarding religion

Where religious education is provided in denominational schools, ECRI encourages the authorities to ensure that a form of religious education which embraces all religions or alternative religious education is delivered.²⁴⁶ In addition, all religious groups should have equal opportunities to open private religious schools.²⁴⁷

Member States must also ensure that instances of discrimination, for example, refusing entry to school to Muslim girls wearing headscarves, are prohibited.²⁴⁸

(i) Reviews of legislation, policy and practice

Legislation, policy and practice in this field should be kept under review in order to ensure that practice is consistent in all areas within the State, particularly as regards access to education for members of national or ethnic minority groups.

k) Employment

ECRI monitors the employment situation in member States with a view to ensuring that measures are taken to protect against discrimination in the workplace and as regards access to employment. ECRI has recommended the adoption of the following common safeguards aimed at combating discrimination in the field of employment.

i. Adoption and implementation of anti-discrimination legislation

As noted in section (d) above, ECRI encourages member States to adopt and maintain a comprehensive body of anti-discrimination legislation. ECRI has stressed that employment should be one of the areas covered by such legislation.²⁴⁹

²⁴³ ECRI second report on Iceland, at paragraph 31.

²⁴⁴ ECRI second report on the United Kingdom, at paragraphs 30-31.

²⁴⁵ ECRI second report on the Netherlands, at paragraph 29.

²⁴⁶ See section II A 2 (g) of this report concerning education and training.

²⁴⁷ ECRI second report on Norway, at paragraph 34.

²⁴⁸ ECRI second report on Ireland, at paragraph 46.

²⁴⁹ ECRI second report on Azerbaijan, at paragraph 30.

ECRI further recommends that member States take measures to ensure the implementation of such legislation including through the establishment of supervisory bodies and effective complaints mechanisms and the delivery of training to relevant officials and members of the legal community.

ii. Awareness raising

Information campaigns should be undertaken to promote awareness of the prohibition of discrimination in employment and of the availability of complaints mechanisms. Such campaigns should be targeted at employers, relevant officials and any potentially vulnerable groups.²⁵⁰ In addition, awareness-raising initiatives should be undertaken to highlight the contribution of non-nationals and members of national minority, ethnic minority and other groups to the economy and to society in general.

iii. Targeting members of particular groups

Member States should pay particular attention to the specific situation of non-nationals, members of national and/or ethnic minority groups and other groups. Where a group appears to be experiencing difficulties, a proactive strategic approach aimed at ameliorating the situation of the particular group concerned should be initiated.

(a) Data collection

Member States should collect data aimed at identifying any difficulties faced by particular groups including any instances of indirect, direct or multiple identity discrimination.²⁵¹ Data concerning the retention of employees from minority or other vulnerable groups should also be gathered, including through systematic exit interviews.²⁵²

(b) Positive measures

Where necessary, positive measures should be undertaken to promote the employment of members of non-nationals, members of national and/or other ethnic minority groups and other groups.

Examples of positive measures welcomed by ECRI

In its second report on Ireland, ECRI recommended that the authorities facilitate continuing access to free medical services for members of the Traveller community entering employment until they have reached a prescribed level of income and job security.²⁵³

In its second report on Slovenia, ECRI welcomed the 2000 "Programme for the Employment of Roma in Slovenia" under which Roma co-operatives, a public work scheme, subsidised employment and preparatory courses for employment and training were initiated.²⁵⁴

²⁵⁰ ECRI second report on Slovenia, at paragraph 32.

²⁵¹ ECRI second report on Latvia, at paragraph 50.

²⁵² See, for example, ECRI second report on the Netherlands, at paragraphs 54 and 57.

²⁵³ ECRI second report on Ireland, paragraph 69.

²⁵⁴ ECRI second report on Slovenia, at paragraph 37.

In its second report on the Netherlands, ECRI welcomed the adoption of the Act on the Promotion of Labour Participation of Ethnic Minorities. Under the Act, companies with more than 35 employees must explicitly strive for a proportional representation of minority groups in their workforce. The Act makes provision for reporting procedures and a framework for enforcement. ECRI encouraged the authorities to ensure compliance with the Act and to raise awareness of the need for this measure among the general public.²⁵⁵

In its second report on the United Kingdom, ECRI welcomed the introduction of race equality employment targets in the areas of recruitment, retention and career progression. ECRI encouraged the authorities to extend the application of these targets in the public sector and to pay particular attention to the representation of ethnic minorities in senior positions.²⁵⁶

ECRI has also welcomed the introduction of a statutory obligation on public authorities in Northern Ireland to promote equality of opportunity and good relations between groups of people of different racial or religious background.²⁵⁷

(c) Language training

ECRI encourages member States to provide language training for adults specifically designed to assist non-mother tongue speakers to enter the labour market.²⁵⁸ A targeted approach to such training should be taken, including the tailoring of language programmes to particular groups and ensuring training is available for isolated groups such as women in the home.²⁵⁹

Training in official languages

In Portugal, the authorities initiated a "Portugal Welcome" scheme, aimed at immigrants, which offered courses in the Portuguese language and education in workers rights. ECRI welcomed this and other initiatives and urged the authorities to keep the effectiveness of such schemes under review.²⁶⁰

iv. Migrant workers

With respect to permit and visa arrangements for non-citizens, including migrant workers, ECRI encourages States to offer a range of work permits and visas to meet the needs of workers in different situations and to offer possibilities for family reunification.²⁶¹

ECRI also encourages member States to ensure that complications or delays as regards the validation of qualifications obtained abroad are avoided in practice.²⁶²

Member States should take measures to ensure that migrant workers are not subject to rates of remuneration inferior to those applied to citizens workers in respect of the same work.²⁶³

²⁵⁵ ECRI second report on the Netherlands, at paragraph 51.

²⁵⁶ ECRI second report on the United Kingdom, at paragraph 38.

²⁵⁷ ECRI second report on the United Kingdom, at paragraph 56.

²⁵⁸ ECRI second report on Latvia, at paragraph 49.

²⁵⁹ ECRI second report on Sweden, at paragraph 51.

²⁶⁰ ECRI second report on Portugal, at paragraph 41.

²⁶¹ ECRI second report on Ireland, at paragraph 50.

²⁶² ECRI second report on Sweden, at paragraph 51.

²⁶³ ECRI second report on Germany, at paragraph 28.

v. Linguistic issues

As regards the legal requirement of proficiency in the national language for employees in the public sector, ECRI recommends that this requirement be strictly limited to professions in respect of which there is a legitimate public interest in favour of such a requirement.²⁶⁴ Limited application of such language requirements and the availability of training in the national language are necessary in order to prevent discrimination against national minorities.

l) Religious groups

ECRI encourages member States to take a targeted approach to ensuring the prohibition of discrimination against minority groups. Such an approach should include the adoption and implementation of the following measures: basic legal provisions concerning religious groups, a comprehensive body of anti-discrimination legislation listing religion as a ground for discrimination and criminal law provisions banning incitement to hatred.²⁶⁵



Poster of the European Conference against Racism, October 2000

²⁶⁴ ECRI second report on Latvia, at paragraph 48.

²⁶⁵ See Sections II A 2 (b), (c) and (d) of this report for further information concerning legal provisions.

In addition, ECRI encourages member States to ensure that the particular situation of religious groups is addressed in respect of the following issues: education, training, access to public services, employment and the media. The situation of religious groups should be specifically addressed in awareness-raising activities and the work of specialised bodies and other institutions. All of these issues are dealt with elsewhere in this Section (Section II A 2) of the report above. Specific additional standards elaborated by ECRI as regards religious minorities are set out below:

Member States should ensure a *proactive response by law enforcement* authorities to any incidences of discrimination or persecution. Incitement to hatred law should be enforced and the authorities should move swiftly to enforce the law in the event of any violations of the law.²⁶⁶

ECRI has noted the significance of the issues of *registration of religious groups*. Registration can enable a religious group, *inter alia*, to open a bank account and acquire premises.

Member States should ensure that legal provisions concerning the registration of religious groups facilitate the registration of all religious groups which wish to practice their religion through lawful means.²⁶⁷ ECRI has noted that some member States may refuse to register religious groups on the grounds that registration may lead to conflict or tension *vis-à-vis* registered groups. In this connection, ECRI has highlighted the judgement of the European Court of Human Rights in the case of Metropolitan Church of Bessarabia and Others v. Moldova. In that case, the Court held that the Government's refusal to recognise the Church of Bessarabia was in violation of Article 9 of the European Convention on Human Rights as it was not proportionate to the legitimate aim pursued and therefore was not necessary in a democratic society.²⁶⁸

ECRI encourages member States to ensure that discriminatory practices do not occur as regards the administration of the registration of religious groups.

Awareness-raising activities should be initiated to inform the public that incidences of racial discrimination and intolerance will not be allowed and will be subject to the requisite legal sanctions. All efforts should be undertaken to combat the normalisation of religious intolerance in society.²⁶⁹ Awareness-raising initiatives reflecting the contribution of religious groups to society and noting any instances of persecution of religious groups in the past should be carried out.

Member States should also ensure that *suitable premises* are allocated to religious groups.²⁷⁰

²⁶⁶ See, for example, ECRI second report on Georgia, at paragraph 51.

²⁶⁷ ECRI second report on Azerbaijan, at paragraphs 35-36.

²⁶⁸ ECRI second report on Moldova, at paragraph 35.

²⁶⁹ ECRI second report on Georgia, at paragraph 52.

²⁷⁰ ECRI second report on Slovenia, at paragraph 14.

m) Monitoring the situation in the country

ECRI encourages member States to monitor the situation of vulnerable groups within the State and to keep under review the effectiveness of measures aimed at combating racism and direct and indirect discrimination. ECRI has set out a number of standards for effective monitoring in this field.

i. Collection of baseline data

ECRI encourages member States to establish and maintain reliable systems of data collection to identify the situation of minority groups in all fields of life, including access to employment, education, accommodation and health. In accordance with its General Policy Recommendation No. 1 on combating racism, xenophobia, antisemitism and intolerance, ECRI calls on member States to ensure that data collection systems adhere to national law and European regulations and recommendations concerning data protection and the protection of privacy.²⁷¹ In particular, data should be collected, in collaboration with relevant minority groups, on the basis of voluntary self-identification and with due respect to the principle of confidentiality.²⁷²

ii. National surveys

ECRI encourages member States to undertake national surveys in accordance with its General Policy Recommendation No. 4 on national surveys on the experience and perception of discrimination and racism from the point of view of potential victims.²⁷³

As regards national censuses, at a minimum, censuses should provide information on the number of national, ethnic and other minority groups in the country and the population and location of such groups.

Collecting data

National censuses should be conducted in accordance with relevant international methodology and should include the voluntary self-identification of individuals as members of minority groups.²⁷⁴

ECRI has encouraged States to undertake awareness raising aimed at encouraging members of minority groups to correctly indicate their membership of a specific group in national censuses.²⁷⁵

iii. Monitoring the implementation of legal provisions and other measures

ECRI encourages member States to monitor the effectiveness of criminal law provisions by developing and maintaining systems to record incidences of racism, intolerance and discrimination.²⁷⁶ In particular, the following information should be recorded: the number

²⁷¹ ECRI second report on Luxembourg, at paragraph 55. For further information on General Policy Recommendation No. 1, see Section II B 2 (a) of this report.

²⁷² ECRI second report on Armenia, at paragraph 58.

²⁷³ For further information on General Policy Recommendation No. 4, see Section II B 2 (d).

²⁷⁴ ECRI second report on Romania, at paragraph 43.

²⁷⁵ See ECRI second report on Romania, at paragraph 43.

²⁷⁶ ECRI second report on Ireland, at paragraph 61.

of complaints under criminal and civil law registered, details of any legal investigations initiated, and the outcomes of such complaints in terms of any decisions rendered and/or redress or compensation awarded.²⁷⁷

Such monitoring systems might be operated by specialised bodies such as ombudsmen, human rights commissions, and/or equality institutions. As regards racist crimes, the national police force should systematically record any apparent racist elements of crimes, even in the absence of legislation providing for the definition of racist crimes.

In its second report on the Netherlands, ECRI noted that a national police "discrimination officer" had been designated. The officer is tasked with improving the expertise of the police in handling discrimination cases and registering such incidents. ECRI supported the proposal of the officer that an expertise centre be set up to enhance initiatives in this field.²⁷⁸

iv. Monitoring and "proofing" proposed legislation

Thirdly, proposed and existing legislation and practices should be 'equality proofed' to test their impact on all members of society and protect against the introduction or retention of discriminatory measures.

n) Conduct of law enforcement officials

ECRI monitors the conduct of law enforcement officials in member States, and, in particular, interactions between law enforcement officers and members of minority groups. ECRI has set out a number of common standards aimed at preventing discriminatory treatment and preparing police officers for policing in multi-cultural societies.

i. Accountability of law enforcement officials

(a) Rule of law

ECRI urges member States to ensure that law enforcement officials operate within the law at all times. In particular, member States should ensure that such officials strictly adhere to national legislation concerning identity checks and national and international standards on protection from arbitrary arrest and detention.²⁷⁹ In addition, any instances of engagement in unauthorised activities, such as unlawful raids on Roma/Gypsy communities should be sanctioned.²⁸⁰

(b) Independent complaints mechanisms

In accordance with its General Policy Recommendation No. 1 on combating racism, xenophobia and antisemitism, ECRI recommends the establishment and maintenance of independent mechanisms to consider complaints against law enforcement officials.²⁷¹

²⁷⁷ ECRI second report on Denmark, at paragraph 33.

²⁷⁸ ECRI second report on the Netherlands, at paragraph 5.

²⁷⁹ ECRI second report on Austria, at paragraph 44.

²⁸⁰ See, for example, ECRI second report on Romania, at paragraph 46.

²⁸¹ See section II B 2 (a) concerning General Policy Recommendation No. 1.

It is axiomatic that, to be effective, such mechanisms must be independent of law enforcement agencies.

Independent complaints mechanisms should be mandated to investigate complaints of unlawful behaviour including racist or discriminatory behaviour, discriminatory checks, abusive speech, excessive use of force, ill-treatment and violence which may result in death.²⁸² Such mechanisms should be empowered to initiate criminal and disciplinary proceedings,²⁸³ and to award effective remedies to complainants.

Independent Police Complaints Board

In its second report on Luxembourg, ECRI welcomed the establishment of an independent Police Complaints Board. On the basis of investigations into complaints carried out by the Board, the police authorities may be required to take disciplinary action against officers or cases may be forwarded to the Office of the Attorney General in order to determine whether police officers ought to face criminal proceedings.²⁸⁴

ECRI also considers that member States ought to undertake measures to encourage victims of racist or discriminatory treatment by law enforcement officials to come forward. Such measures might include the appointment of mediators from minority groups and increased recruitment of members of minority groups into law enforcement agencies.²⁸⁵

(c) Internal discipline

ECRI has stressed the need to combat prejudice and stereotypes within police forces in order to establish sustainable multiethnic police services.²⁸⁶ Therefore, ECRI encourages member States to ensure that disciplinary action is taken against police officers who engage in discriminatory behavior, display negative attitudes or make negative statements about particular groups.²⁸⁷ Police authorities should also clearly and publicly condemn any such behaviour by police officers.²⁸⁸

ECRI encourages member States to take measures to ensure that law enforcement officers do not release information concerning the ethnic origin of alleged perpetrators of crimes to the media.²⁸⁹

ECRI considers that member States ought to ensure that policy direction in this field filters down from the central authorities to local law enforcement agencies.²⁹⁰

ii. Combating racist crime

In respect of many member States, ECRI has noted that victims of racism or racial discrimination do not report offences to the police because the police response to

²⁸² See, for example, ECRI second report on Spain, at paragraphs 38-39.

²⁸³ ECRI second report on Azerbaijan, at paragraph 40.

²⁸⁴ ECRI second report on Luxembourg, at paragraph 53.

²⁸⁵ ECRI second report on Poland, at paragraph 50.

²⁸⁶ ECRI second report on the Netherlands, at paragraph 43.

²⁸⁷ See, for example, ECRI second report on Germany, at paragraph 33.

²⁸⁸ ECRI second report on Finland, at paragraph 40.

²⁸⁹ ECRI second report on Slovakia, at paragraph 26.

²⁹⁰ ECRI second report on France, at paragraph 30.

complaints of racism and racial discrimination is unsatisfactory. In accordance with its General Policy Recommendation No. 1, ECRI calls on member States to "ensure that criminal prosecution of offences of a racist or xenophobic nature is given a high priority and is actively and consistently undertaken".²⁹¹

ECRI encourages member States to take measures to improve the police response to racist crime. Such measures might include the establishment of specialised anti-racism units, ensuring that due attention is paid to the racist motivation of crimes and the development of a victim's perspective of race crime.²⁹²

iii. Training

The best possible guarantee against racism by law enforcement officials is for such officials to be properly trained. ECRI considers it to be vital that member States deliver human rights training, with a focus on issues of racism and discrimination, to law enforcement officers in training colleges and during service.²⁹³ Training programmes should promote awareness of the diverse nature of the society in which they operate and an understanding of all aspects of discrimination.

Specialist training should be delivered to all officers who come into contact with persons of foreign origin including, in particular, officers responsible for border controls and deportations. ECRI emphasizes that such officers should receive on-going training enabling them to receive and deal with asylum requests correctly.²⁹⁴

ECRI encourages member States to support the involvement of civil society in human rights training delivered to law enforcement officers.²⁹⁵

The effectiveness of human rights training delivered to trainees at police colleges and during police service should be properly evaluated. In particular, the authorities should ensure that training delivered has a real impact on everyday policing practice.²⁹⁶

iv. Awareness raising

ECRI considers that member States have a duty to raise awareness among law enforcement officials of the need to tackle racist and discriminatory offences. In particular, the identification of racist elements of crime and the need to respond to and record racist elements of crime should be highlighted.²⁹⁷

ECRI stresses the importance of tackling any communication problems between law enforcement agencies and specific groups. Measures should be taken to improve relations between immigrant and minority communities and law enforcement officials.²⁹⁸

²⁹¹ ECRI second report on Poland, at paragraph 49. For further information on General Policy Recommendation No. 1, see section II B 2 (a).

²⁹² ECRI second report on Sweden, at paragraph 67.

²⁹³ ECRI second report on Armenia, at paragraph 55.

²⁹⁴ ECRI second report on Malta, at paragraph 12.

²⁹⁵ ECRI second report on Lithuania, at paragraph 38.

²⁹⁶ ECRI second report on Spain, at paragraph 40.

²⁹⁷ ECRI second report on Finland, at paragraph 38.

²⁹⁸ ECRI second report on Luxembourg, at paragraph 51.

Such measures might include the appointment of cultural mediators to promote communication between law enforcement officers and members of particular communities.²⁹⁹

Enhancing relations with minority groups

In Romania, ECRI noted that the police authorities had organised seminars in collaboration with minority groups aimed at improving relations between the police and minority groups. ECRI welcomed this and other initiatives.³⁰⁰

v. Recruitment

ECRI encourages member States to remove potential obstacles which may prevent members of minority groups from joining law enforcement agencies.³⁰¹ In addition, ECRI considers that member States ought to take measures to promote the recruitment of members of minority groups into law enforcement agencies.

Positive measures

In its second report on Estonia, ECRI noted that, during recruitment, extra points were awarded to members of minority groups to compensate for any disadvantage due to the fact that Estonian was not their mother tongue. Classes in the Estonian language were also provided. ECRI welcomed these measures.³⁰²

In its second report on Slovakia, ECRI welcomed the preparation of a two-year preparatory training course for members of the Roma/Gypsy community wishing to apply to the police academy.³⁰³

ECRI also invites member States to take measures to ensure the retention of officers from minority groups and the presence of officers from minority groups in senior ranks within law enforcement agencies.³⁰⁴

Targets

In its second report on the United Kingdom, ECRI welcomed the establishment of targets for the recruitment, retention and promotion of ethnic minority police officers.³⁰⁵

vi. Linguistic and cultural issues

ECRI considers that member States ought to ensure that professional interpretation services are provided, in order that non-mother tongue speakers can communicate properly with law enforcement officials.³⁰⁶

ECRI encourages member States to ensure that, in prisons provision is made for the particular requirements of non-national detainees.³⁰⁷

299 ECRI second report on Italy, at paragraph 54.

300 ECRI second report on Romania, at paragraph 45.

301 ECRI second report on Germany, at paragraph 34.

302 ECRI second report on Estonia, at paragraph 54.

303 ECRI second report on Slovakia, at paragraph 25.

304 ECRI second report on the Netherlands, at paragraph 43.

305 ECRI second report on the United Kingdom, at paragraph 50.

306 ECRI second report on Luxembourg, at paragraph 52.

307 ECRI second report on Malta, at paragraph 11.

vii. Data collection

It is important that systems are in place to record information concerning complaints of racism and/or racial discrimination. In particular, ECRI considers that the following information should be collected: the number of complaints, subsequent investigations and outcomes from judicial assessment of such complaints.³⁰⁸

ECRI also recommends that the frequency of stops and searches carried out on members of minority groups should be monitored where there is suspicion that such checks are carried out in a discriminatory manner.³⁰⁹

o) Media

ECRI considers that the media can play a crucial role in influencing the climate of opinion within States concerning minority groups and non-nationals. In order to encourage the media and political groups to fulfill this role in a positive manner, ECRI has set out a number of legal and operational standards with which it urges the media and member States to comply.

General standards regarding relevant civil and criminal law provisions and awareness raising are set out in sections (b), (c) and (d) above. Additional standards elaborated by ECRI as regards the media are set out below.

i. Implementation of legal provisions and other measures

ECRI encourages the authorities to ensure that incitement to hatred and other anti-discrimination legal provisions are enforced. In addition, member States should ensure that such legislation covers dissemination of racist material through the Internet and, in this connection, ECRI encourages States to consider its General Policy Recommendation No. 6 on combating the dissemination of racist material via the Internet.³¹⁰

ECRI supports the establishment of supervisory mechanisms to oversee the implementation of relevant legal provisions.

ECRI is also supportive of additional measures which aim to prevent the use of disparaging language in the media.

Measures to prevent the use of inappropriate language

In its second report on Spain, ECRI noted with approval that the Ministry of Labour and Social Affairs had taken initiatives to prevent the use of inappropriate language in references to the Roma/Gypsy community. ECRI also noted that some of the Autonomous Communities in Spain had concluded agreements with the media concerning the protection of the culture and image of minority groups.³¹¹

³⁰⁸ ECRI second report on Denmark, at paragraph 33.

³⁰⁹ ECRI second report on Sweden, at paragraph 45.

³¹⁰ ECRI second report on Finland, at paragraph 45. For further information on General Policy Recommendation No. 5, see section II B 2 (f).

³¹¹ ECRI second report on Spain, at paragraph 42.

ii. Self-regulation

ECRI encourages media organisations to draw up and operate within codes of self-regulation. These codes should aim to prevent the negative stereotyping of minority groups and the sensationalising of conflict between minority groups. In particular, ECRI stresses the need to end the practice of highlighting the racial or ethnic background of persons accused or convicted of criminal offences where this factor is irrelevant.³¹²

Codes of self-regulation for the media

In the Netherlands, the code of self regulation of the Dutch Organisation of Journalists states that a person's background, including their race, nationality and religion, should only be mentioned if relevant; racist or prejudiced statements should only be reported if relevant, and that migrants should be quoted on issues additional to "migrant issues". ECRI called for stricter compliance with these regulations.³¹³

In its second report on the United Kingdom ECRI recommended that codes of self regulation should prohibit not just prejudicial or unnecessary reference to a person's background but should also prohibit general racist assumptions and stereotypes.³¹⁴

As regards the Internet, ECRI supports efforts by internet service providers to regulate, to the extent which they can, material disseminated on the Internet.

Codes of self-regulation for internet service providers

ECRI has noted with approval that, in Germany, 400 internet service providers adopted a voluntary self-regulation mechanism, which provides for a hotline for the communication of complaints, the imposition of sanctions against members disseminating racist materials, and the withdrawal of websites.³¹⁵

iii. Training

ECRI encourages media organisations to provide training to staff in order to promote responsible reporting and to raise awareness of the existence and content of any codes of self-regulation and relevant legal provisions.³¹⁶

iv. Minority and other groups

In respect of countries with a significant population of minority language speakers, measures should be undertaken to prevent the further polarisation of society through the delivery of substantively diverse media services. Such measures should include encouraging minority and majority language newspapers to carry the same articles and features.³¹⁷

³¹² ECRI second report on Slovenia, at paragraph 47.

³¹³ ECRI second report on the Netherlands, at paragraph 44.

³¹⁴ ECRI second report on the United Kingdom, at paragraph 52.

³¹⁵ ECRI second report on Germany, at paragraph 37.

³¹⁶ ECRI second report on Luxembourg, at paragraph 57.

³¹⁷ ECRI second report on Moldova, at paragraph 39.

ECRI supports the adoption of legal provisions which place an obligation on public broadcasters to reserve an adequate portion of air time for broadcasts in minority languages.³¹⁸

Support for minority languages

In Slovenia, provisions guarantee the publication of newspapers and magazines in two national minority languages and access to television and radio broadcasting for members of minority groups. The authorities also co-finance publications and broadcasts for the Roma/Gypsy community. ECRI has welcomed these initiatives.³¹⁹

ECRI encourages member States to undertake efforts to improve access for members of minority groups to the media and to increase representation of members of such groups in media organisations.³²⁰

p) Other issues of country-specific concern

In its second round of country-specific reports, ECRI dedicates a section of each report to the examination of "a limited number of issues which, in its opinion, merit particular and urgent attention in the country in question".³²¹ This approach enables ECRI to highlight specific issues of concern within member States, examine the nature of the issues concerned and recommend remedial measures which member States should undertake at the earliest opportunity.

Highlighting issues of particular concern *enables ECRI to underline the importance of a targeted approach* to tackling racism and intolerance at national level. Notwithstanding the fact that a different set of "issues of concern" are treated in the second reports on each member State, ECRI sets out a number of common principles which should be considered when tackling such issues.

ECRI's main messages concerning the reception and status of non-citizens are dealt with in section (i) above.

i. Minority or vulnerable groups

Accurate data regarding the situation of minority or other vulnerable groups across all fields of life should be collected. This data should then be used to inform the development of a co-ordinated strategic plan aimed at ameliorating the situation of the groups concerned. Remedial legal and other provisions should be adopted and structures established to oversee their implementation.

Involvement of members of minority or other vulnerable groups should be secured in respect of all efforts to ameliorate their situation from the planning to the implementation phase. In parallel with these efforts, additional efforts should be undertaken to increase representation of members of minority groups in public life (where such groups are under represented) and to improve the climate of opinion regarding such groups, including through the initiation of awareness raising activities.

³¹⁸ ECRI second report on Armenia, at paragraph 57.

³¹⁹ ECRI second report on Slovenia, at paragraph 46.

³²⁰ ECRI second report on Armenia, at paragraph 57.

³²¹ See the introduction to the section "Issues of particular concern" in ECRI's second round reports on member States.

A targeted approach to preventing discrimination against minority groups in all fields of life including; education, access to public services, employment and the administration of justice should be undertaken. In addition, awareness-raising initiatives, specialised bodies and the media should pay particular attention to the situation of minority groups in their work. All of these issues are elaborated upon above.

ECRI's General Policy Recommendations should be taken into consideration in the context of the development of strategies to ameliorate the situation of minority groups. For example, General Policy Recommendation No. 5 on combating intolerance and discrimination against Muslims and General Policy Recommendation No. 3 on combating racism and intolerance against Roma/Gypsies both propose a range of measures governments can take to counter discrimination and intolerance against these groups.

ECRI stresses the importance of ensuring that *adequate anti-discrimination legislation is implemented*.³²³ In particular, States must ensure that officials and private persons, such as employers and service providers, are fully aware both of the existence of legislation prohibiting discrimination and of a commitment to ensure compliance with that legislation, including the punishment of any offending acts or omissions.³²²

In Romania, the national "Strategy for Improving the Condition of the Roma" provides for the employment of Roma representatives in each prefecture responsible for implementing the measures set out in the Strategy.³²³

Member States must also undertake measures to ensure that legal protection against discrimination is extended to non-citizens. Such measures might include expediting the granting of citizenship status to minority groups and ensuring that legal protection is provided in respect of non-citizens.³²⁵

In addition to measures prohibiting discrimination, ECRI recommends that States undertake *pro-active measures* to ameliorate the situation of members of vulnerable groups.

In Latvia, the authorities initiated pilot projects aimed at delivering education and training to the Roma/Gypsy community and the establishment of information centres to service members of the community.³²⁶

In Romania, ECRI encouraged the authorities to undertake enhanced measures to ensure that all members of the Roma/Gypsy community obtain identity cards, birth certificates and other documentation necessary for accessing services and the protection of the law. The measures proposed included awareness-raising campaigns aimed at members of the Roma/Gypsy community and training for officials charged with processing applications for such documentation.

³²² For further information on ECRI's General Policy Recommendations, see Section II B 2.

³²³ For further information, see ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination. See also Section II B 2 (g) of this report with examines the content of General Policy Recommendation No. 7.

³²⁴ ECRI second report on Romania, at paragraph 53.

³²⁵ ECRI second report on the Russian Federation, at paragraphs 40-41.

Member States develop global strategies to *promote the integration of marginalised groups* into society. Such measures might include; awareness raising activities aimed at combating any negative climates of opinion, official language lessons for non-mother tongue speakers, training for professional groups such as civil servants and teachers, outreach activities to inform non-citizens and/or members of minority groups of their rights, extension of eligibility and voting rights and facilitating access to citizenship

ECRI welcomed the drafting of a "Blueprint for Integration" by the government of Liechtenstein, in collaboration with non-citizen groups, setting out guidelines for the development of a national integration policy.³²⁸

ECRI welcomed the adoption by the Lithuanian Government of a "Programme for the Integration of the Roma into Lithuanian society 2000-2004. The programme provides for specific initiatives in the education, health, employment and cultural fields.³²⁹

In its second report on Sweden, ECRI set out some advice regarding the elaboration of integration policy. Firstly, the concept of 'successful integration' should be defined and this definition should inform the formulation of the goals of the integration policy. Secondly, effective implementation methodology should be developed and the effectiveness of the policy should be kept under close review. Thirdly, the concept of integration as a process which involves members of both majority and minority communities should be highlighted.³²⁸

In its second report on Latvia, ECRI welcomed the adoption by the authorities of the "National Programme for the Integration of the Society in Latvia". The programme focuses on civic participation and political integration, social and regional integration of society, education, language, culture, naturalisation and information. The programme is to be implemented through projects designed by civil society organisations and implementing machinery for the programme has been established. ECRI encourages the authorities to afford a high level of priority to the programme.³³⁰

ECRI encourages member States to develop dedicated national integration strategies or to include the issue of integration in the National Action Plans against Racism being drawn up by States as a follow-up to the Durban World Conference against Racism.³³¹

Finally, ECRI encourages member States to actively tackle *discrimination in daily life*. Member States should ensure that measures such as those listed above are undertaken to combat the normalisation of discriminatory practices and to impress on the majority population that discrimination will not be tolerated.³³²

³²⁶ Second report on Latvia, at paragraph 55.

³²⁷ ECRI second report on Liechtenstein, at paragraph 46.

³²⁸ ECRI second report on Lithuania, at paragraph 56.

³²⁹ ECRI second report on Sweden, at paragraphs 81-82.

³³⁰ ECRI second report on Latvia, at paragraphs 73-75. Similar initiatives have been undertaken in other member States; see for example, ECRI second report on Estonia, at paragraph 59.

³³¹ ECRI second report on San Marino, at paragraph 33. For further information on the World Conference against Racism, see Section II B 4 of this report.

³³² See, for example, ECRI second report on Finland, at paragraphs 54-57.

(a) Roma/Gypsy communities

ECRI has identified the situation of Roma/Gypsy communities as an area of particular concern in respect of many member States. ECRI has noted that, in many countries, Roma/Gypsy communities suffer from severe socio-economic disadvantage. They also are subject to prejudice, discrimination and violence from members of the majority population and sometimes from public officials.

In addition to the standards set out above regarding minority groups, ECRI encourages member States to adopt a global strategic approach to preventing discrimination against this community in accordance with its General Policy Recommendation No. 3 on combating racism and intolerance against Roma/Gypsies.³³³ ECRI has highlighted the following areas which should be targeted within such a strategic approach.

As regards *education*, member States should ensure access to mainstream education, including pre-school education and take measures to prevent absenteeism and high drop out rates. Efforts should be undertaken to prevent de facto segregation in schools and the inappropriate placement of Roma/Gypsy children in special needs classes.³³⁴

As regards *employment*, ECRI encourages member States to combat labour discrimination through research, awareness-raising initiatives and enforcement of legislative measures.

In its second report on Spain, ECRI welcomed the operation of the Roma Development Programme which provided training schemes, counselling to help young people integrated into the employment sector, vocational training and training for intercultural mediators. ECRI also welcomed the EU-sponsored "Acceder" programme which works to promote employment of persons from disadvantaged groups.³³⁵

As regards *housing*, ECRI urges member States to combat discriminatory legal provisions or administrative practices regarding the allocation of housing and/or land. In particular member States must take measures to end situations where Roma/Gypsy communities live in habitations without basic amenities such as running water, heating and sanitation.³³⁶ Member States should also take measures to avoid the practical and de facto segregation of Roma/Gypsy communities in the area of housing.

As regards access to *health services* member States should undertake initiatives to ensure access to health care for Roma/Gypsy communities in practice. Such measures should include, preventing and sanctioning discrimination by health service workers and ensuring that health care systems can cater for the specific needs of the Roma/Gypsy community.³³⁷

As regards the *conduct of law enforcement officers* and the *administration of justice*, ECRI encourages member States to pay particular attention to the situation of

³³³ See Section II B 2 (c) of this report for further information on General Policy Recommendation No. 3.

³³⁴ ECRI second report on Spain, at paragraph 44.

³³⁵ ECRI second report on Spain, at paragraph 45.

³³⁶ ECRI second report on Moldova, at paragraph 30.

³³⁷ See, for example, ECRI second report on Italy, at paragraph 65.

members of the Roma/Gypsy community. In particular, States should undertake measures to ensure that they are not subjected to ill-treatment by law enforcement officers. For further information on this issue, see sub-section (N) above. In addition, member States should ensure that discriminatory practices do not occur in relation to sentencing practices. For further information on this issue, see sub-section (e) above.

As regards *access to public places*, member States should ensure that instances of discrimination in the public and private sector do not occur. Particular attention should be paid to the situation of Roma women wearing traditional costume.³³⁸

With respect to *the media*, in accordance with its General Policy Recommendation No. 3 on combating racism and intolerance against Roma//Gypsies, ECRI calls on member States to raise awareness among the members of the media of their responsibility to avoid using prejudicial language. Members of the media should also avoid reporting stories concerning individual members of the Roma/Gypsy community in a manner which reflects negatively on that community as a whole.³³⁹

As regards *citizenship and residence permits*, ECRI encourages member States to ensure that members of the Roma/Gypsy community are in a position to apply for such status and documents. In addition, activities aimed at raising awareness within Roma/Gypsy communities of the benefits of citizenship status and residence permits should be initiated (for further information see sub-section (b) regarding Citizenship Law above).

(b) Muslim communities

In addition to the standards set out as regards minority or other vulnerable groups above, ECRI encourages member States to take specific measures to tackle any emerging negative climates of opinion as regards Muslim communities in the wake of 11 September 2001. In particular, media reporting should be monitored with a view to ensuring responsible reporting in this connection.³⁴⁰ ECRI encourages member States to consider its General Policy Recommendation No. 5 on combating intolerance and discrimination against Muslims, which proposes a range of measures governments can take to counter discrimination and intolerance against Muslims.³⁴¹

(c) Jewish communities

ECRI encourages member States to implement measures to actively combat any manifestations of antisemitism, whether latent or overt. Such measures should include implementation of incitement to hatred legislation other relevant legal provisions. In addition, the authorities should swiftly and unequivocally condemn any incidents of antisemitism.³⁴²

³³⁸ ECRI second report on Finland, at paragraph 27.

³³⁹ ECRI second report on Moldova, at paragraph 30.

³⁴⁰ See, for example, ECRI second report on Luxembourg, at paragraph 61.

³⁴¹ ECRI second report on Spain, at paragraph 37. For further information on General Policy Recommendation No. 5 see Section II B 2 (e).

³⁴² ECRI second report on Latvia, at paragraph 56.

Awareness-raising activities aimed at increasing awareness of Nazi crimes, the Holocaust and the dangers of antisemitism should be initiated.³⁴³ In addition, in relation to several member States, ECRI has called on the authorities to take action to combat the phenomenon of antisemitic chanting at football matches.³⁴⁴

(d) Indigenous peoples

ECRI encourages member States with indigenous populations to expedite the resolution of any outstanding issues regarding land rights, in accordance with the ILO Convention No 169 on Indigenous Peoples and to accede to this Convention for this purpose.³⁴⁵

(e) Formerly deported populations and returnees

ECRI encourages member States to ensure that formerly deported populations and returning refugees or displaced persons are not discriminated against. Such measures might include adopting a flexible approach to requirements concerning criteria for citizenship (see section (b) above for further information). All legal and policy initiatives aimed at protecting this group from discrimination in all field of life should be elaborated in close consultations with representatives of the communities concerned.

(f) Persons of immigrant origin or background

In addition to the standards set out as regards minority or other vulnerable groups above, ECRI encourages member States to pay particular attention to the following issues as regards persons of immigrant background and/or foreign workers.³⁴⁶

Member States should ensure that *visa and work permit arrangements* do not infringe upon the rights of such persons, particularly where work permits are issued to employers as opposed to employees. Efforts should be undertaken to raise awareness of their rights among persons of immigrant origin.³⁴⁷ As regards immigrant women who come to a State to marry a citizen of the State, the authorities should ensure that the resident permit arrangements which apply to such women retain their validity in the event that the women concerned leave relationships as a result of abuse or violence.³⁴⁸

ECRI encourages member States to *combat illegal employment* through measures which target employers rather than employees. In addition, assistance should be provided to persons employed illegally should their source of income become blocked.³⁴⁹

Persons of immigrant background may become subject to *asylum procedures*, in member States. For an outline of ECRI's concerns and recommendation regarding this issue, please see sub-section (i) above entitled "Reception and status of non-citizens".

343 See, for example, ECRI second report on Sweden, at paragraph 64.

344 For example, see ECRI second report on the Netherlands, at paragraph 36.

345 ECRI second report on Finland, at paragraph 33.

346 ECRI second report on the Ukraine, at paragraphs 46-54.

347 ECRI second report on Iceland, at paragraph 46.

348 ECRI second report on Sweden, at paragraph 54.

349 ECRI second report on Luxembourg, at paragraph 50.

In this connection, it is important to note here that ECRI encourages member States to take measures to prevent arbitrary deportations. Such measures should include ensuring that non-citizens threatened with deportation are given the possibility to exercise their rights under national and international law. Such rights should include the right to appeal against a deportation order and the right to legal aid and to an interpreter free of charge. In addition, member States should ensure national procedures are in compliance with the jurisprudence of the European Court of Human Rights under Article 8 of the European Convention on Human Rights which provides that the deportation of a foreigner should not infringe upon his/her right to family life.³⁵⁰

ii. Extremist political and other groups

In response to the prevalence of extremist groups in some member States, ECRI has identified a number of specific issues which should be addressed in efforts to combat the activities of such groups.

(a) Implementation of legislation³⁵¹

Adequate incitement to hatred legislation should be implemented vis a vis political groups which publish racist and other material aimed at inciting hatred and intolerance. Member States should ensure that such legislation covers all media through which extremist messages can be spread, including the Internet, electronic mail and white power music.³⁵²

Where general incitement to hatred provisions have proved ineffective, ECRI encourages member States to consider adopting specific legal provisions concerning the activities of extremist political groups. The aim of such legal provisions should be to counter the activities of political parties which resort to extreme nationalist, racist and xenophobic propaganda which could incite or lead to acts of violence and discrimination.³⁵³ In addition, consideration might be given to providing for the partial or total suppression of public financing for political parties which engage in racist or discriminatory acts.³⁵⁴

(b) Additional measures to combat extremism

In addition to the implementation of legal measures, ECRI encourages member States to undertake additional measures in order to combat the activities of extremist groups. Such measures might include: monitoring the activities of extremist groups, ensuring a co-ordinated response from the police and other authorities to racist activities, undertaking awareness-raising campaigns, dissuading local authorities from renting venues to extremist groups and promoting the public debate on the issue of extremism.³⁵⁵

350 ECRI second report on Slovenia, at paragraph 54.

351 See also section II A 2 (b) of this report concerning Constitutional provisions and other basic provisions.

352 See, for example, ECRI second report on Sweden, at paragraph 71.

353 ECRI second report on the Russian Federation, at paragraph 61.

354 ECRI second report on Lithuania, at paragraph 42.

355 ECRI second report on Liechtenstein, at paragraphs 50-51.

In its second report on Germany, ECRI noted that the Federal Border Guard has been charged with assisting the State Police in dealing with extremist violence and with receiving information concerning extremist groups via a hotline. ECRI welcomed this initiative and urged the authorities to provide adequate training to law enforcement officials as regards the implementation of legal provision and other measures aimed at combating the activities of extremist groups.

(c) Leadership

ECRI urges political parties to resist the temptation to approach the issue of minority groups in a negative fashion.³⁵⁷ In particular, "ECRI stresses that politicians have a responsibility to speak out firmly against manifestations of hostility and xenophobia, but also to avoid using terms or discourse which may have negative connotations in the public consciousness".³⁵⁸

Where extremist political groups are active, ECRI encourages governments and mainstream political parties to provide leadership and to clearly condemn the activities of such groups. In this connection, ECRI encourages all political parties to adhere to the principles set out in the Charter of European political parties for a non-racist society.³⁵⁹

ECRI has expressed concern at the electoral success of political parties which espouse racist and xenophobic views and propaganda and at the influence such groups have had on mainstream or traditional political groups in the States concerned. In addition, ECRI has expressed particular concern at the inclusion of such political parties in coalition governments.

Participation in coalition government of groups which have espoused racist views

In its second report on Italy, ECRI expressed concern at the participation in coalition government of extremist political parties. In this connection, ECRI has called on member States to ensure that incitement to hatred legislation provisions are effectively implemented.³⁶⁰

iii. Situations resulting from internal or external conflict

ECRI encourages members States which have experienced or are experiencing conflict to pursue constructive dialogue with all relevant national and international actors in order to achieve pacific settlement of disputes. In particular, ECRI encourages States to resolve issues concerning the return of refugees and internally displaced persons to their homes and to focus on the need to achieve full reconciliation and build mutual confidence between different communities residing in the state.³⁶¹

³⁵⁶ ECRI second report on Germany, at paragraph 46.

³⁵⁷ ECRI second report on Austria, at paragraph 37.

³⁵⁸ Second report on Ireland, at paragraph 79.

³⁵⁹ ECRI second report on Luxembourg, at paragraph 54.

³⁶⁰ ECRI second report on Italy, at paragraphs 73 and 75.

³⁶¹ See, for example, ECRI second report on Georgia, at paragraph 47.

B WORK ON GENERAL THEMES

1. Preliminary remarks

Work on general themes is another of the three main strands of ECRI's programme of activities, the other two being country-by-country work and relations with civil society. As already mentioned, the three strands of ECRI's work are closely linked and are intended to be mutually reinforcing. It is therefore important not to consider ECRI's work on general themes in isolation, but rather in the context of its country-by-country work and work on relations with civil society, as described in Sections A and C of this review.

ECRI's work on general themes comprises four principal areas; the production of General Policy Recommendations, collecting and disseminating of examples of "good practices", work to broaden the scope of the non-discrimination provisions of the European Convention on Human Rights, and the follow-up to the European and World Conferences against Racism.

To date, ECRI has produced seven General Policy Recommendations (GPRs) regarding: combating racism, xenophobia, antisemitism and intolerance (GPR 1); specialised bodies at national level to combat racism, xenophobia, antisemitism and intolerance (GPR 2); combating racism and intolerance against Roma/Gypsies (GPR 3); national surveys on the experience and perception of discrimination and racism from the point of view of potential victims (GPR 4); combating intolerance and discrimination against Muslims (GPR 5); combating the dissemination of racist, xenophobia, antisemitic material via the Internet (GPR 6); and national legislation to combat racism and racial discrimination (GPR 7).

This section includes a synopsis of the substantive content of all seven General Policy Recommendations.

ECRI has also produced four publications identifying "good practices". Of these, three recent publications have focussed on examples of good practice in the areas of: the fight against racism and intolerance in the European media, specialised bodies, and combating racism and intolerance against Roma/Gypsies. An earlier publication, produced in 1996 provided a "basket" of examples of "good practice" across a number of thematic areas.³⁶² For its series of publications on "good practices", ECRI has selected examples which could, potentially, be replicated elsewhere, particularly in other member States. In order to enhance this potential, ECRI has made efforts to disseminate this series of publications as widely as possible.

In this section, edited examples of the "good practices" identified by ECRI have been interspersed throughout the text describing ECRI's General Policy Recommendations. This approach has been adopted in order to provide real-life illustrations of the manner

³⁶² Examples of "good practice" to fight against racism and intolerance in the European media, CRI (2000) 19; Good Practices: Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, CRI (99) 43; Practical examples in combating racism and intolerance against Roma/Gypsies, CRI (2001) 28; Combating Racism and Intolerance: A basket of good practices, CRI (96) 38.

in which the precepts outlined in the General Policy Recommendations can be carried into practice.

Other general thematic activities undertaken by ECRI, and outlined in this section, include work to broaden the scope of the non-discrimination provisions of the European Convention on Human Rights and to follow-up the European and World Conferences against Racism.

2. General Policy Recommendations and examples of “good practices”

a) Combating racism, xenophobia, antisemitism and intolerance

Combating racism, xenophobia, antisemitism and related intolerance has been recognised as a major priority by the international community. Alarmed by the resurgence of racism, xenophobia, antisemitism and intolerance, the Heads of State and Government of Council of Europe member States adopted at their first Summit held in Vienna in October 1993 a Declaration and Plan of Action to combat those scourges. As a result of the Vienna Declaration, ECRI was created. ECRI's distinctive contribution in this area has been the formulation of specific proposals to assist States in combating racism, xenophobia, antisemitism and intolerance, both in its country-by-country work and its General Policy Recommendations. ECRI's General Policy Recommendation No. 1 (GPR 1) sets out concrete proposals as regards the policy approach which States should adopt in respect of legal measures, education, training and research, the behaviour of police officers and other public officials, and access to public services and employment.

i. Legal measures

ECRI considers that the adoption and enforcement of clear legal standards prohibiting discrimination is a crucial component of any national anti-discrimination strategy. GPR 1 emphasises that an important first step is for governments to sign and ratify relevant international legal instruments, and to incorporate measures aimed at combating racism, xenophobia, antisemitism and intolerance at a fundamental level in the national legal order. The importance of ratification of international standards is also underlined in ECRI's country-by-country work, which stresses that States should refrain from lodging reservations to such instruments, and should make available to the public information concerning the protection afforded by international standards which have been ratified.³⁶³

For fundamental norms to be fully effective, detailed provisions should also be elaborated in criminal, civil and administrative law. Under the criminal law, it is important that those responsible for racist acts or incitement to hatred, discrimination or violence be systematically held to account for their actions, and that their racist motives be taken into account by the courts. In civil and administrative law, specific measures prohibiting

³⁶³ For further information on this aspect of ECRI's country-by-country work, see Section II A 2 (a) on International legal instruments.

discrimination in the provision of public services and in employment should be adopted and maintained. Proper records should be kept on the occurrence of racist incidents and on the number and outcome of related prosecutions. Such offences have a very serious effect on the victims, who should be provided with appropriate assistance and compensation.

Many of the worst racist attacks and abuses of human rights are the result of deliberate and organised campaigns by racist organisations or media outlets. ECRI's GPR 1 recommends that legal measures should be taken to combat racist organisations, including, where necessary, banning offending organisations and taking action against those who produce, distribute and store racist material. In its country-by-country work, ECRI monitors the operation of criminal law and encourages member States to ensure that racist and discriminatory acts are prohibited and penalised.³⁶⁴ A number of standards have also been set out in ECRI's country-by-country work on civil and administrative law, including the introduction of anti-discrimination legislation prohibiting discrimination in the provision of goods and services.³⁶⁵

ii. Education, training and research

Anti racism and equality education pack

The National Youth Council of Ireland created an education pack, designed for working with young people to explore concepts of identity, belonging and difference, racism and exclusion, social awareness and participation in changes. It includes a series of fact sheets, questionnaire, hand-outs, role-playing games and other activities for young people. The National Youth Council of Ireland also conducts training programmes using the pack.

Negative attitudes about minority groups are often formed early in life and reinforced by popular culture. In GPR 1, ECRI suggests that education in schools and general awareness raising in society are needed to promote the appreciation of cultural diversity.

School curricula should include accurate information on multiculturalism and the problem of racism particularly with regard to instruction in history subjects. Education at a more advanced level can help to prevent institutional racism and discrimination. GRP 1 recommends that specialised training courses on cultural sensitivity and non-discrimination should be delivered to those who have professional responsibilities which bring them into contact with minority groups or non-citizens. Such training is also appropriate for individuals within organisations responsible for recruitment.

With a view to the effective monitoring of racist incidents, GPR 1 indicates that research should be conducted into the nature and causes of racism, and that data should be collected on racist offences and the experiences of groups particularly vulnerable to racism.

³⁶⁴ For further information on this aspect of ECRI's country-by-country work, see Section II A 2 (c) on Criminal law.

³⁶⁵ For further information on this aspect of ECRI's country-by-country work, see Section II A 2 (d) on Civil and administrative law.

iii. Police and public officials

For many people, including members of minority groups, police officers and other public officials are the “face” of the State. As such, they ought to stand in the front line of the fight against racism. Unfortunately, in many States in which ECRI is active, the behaviour of police officers and public officials does not positively contribute to combating racism and intolerance.

GPR 1 emphasises that police officers should actively promote the equal treatment of minority groups and should engage in constructive and frequent dialogue with them. In the interests of justice and transparency for all concerned, independent mechanisms of enquiry into racist incidents should be established.

ECRI's Recommendation also makes clear that all public officials should promote tolerance in their public comments, and the recruitment of minorities as public officials, including as police officers, should be encouraged.

In order to assist police officers and other public officials to deliver the quality of service which members of minority groups are entitled to expect, GPR 1 recommends that such officials should be provided with specialist training in non-discriminatory practices. In its country-by-country work, ECRI further emphasises the crucial role of those responsible for the administration of justice in combating racism. In this context, it encourages member States to ensure that public officials, including police officers, should receive systematic and ongoing training regarding racism and discrimination.³⁶⁶

Encouraging a more representative police force, Netherlands

The project aimed to achieve a more representative police force by appointing police officers from ethnic minorities. It involved the revision of examination material and methods in order not to exclude candidates from minority backgrounds. Training was provided for police on intercultural management skills and inter-ethnic communication, and training opportunities for police from minority backgrounds were improved.

iv. Access to public services and employment

The effective prohibition of discrimination will often require the introduction of positive measures to promote equality of opportunity. GPR 1 stresses that all members of the public should have equal access to public services including healthcare, social services, education and housing. In order to create a “level playing field”, special training measures may be required to assist members of minority groups to enter the labour market. GPR 1 recommends that States should live up to their responsibility to ensure that, where necessary, such measures are put in place.

³⁶⁶ For further information on this aspect of ECRI's country-by-country work, see Section II A 2 (e) on Administration of Justice.

b) Specialised bodies at national level to combat racism, xenophobia, antisemitism and intolerance

ECRI is convinced that specialised national bodies can make a significant contribution to combating racism, xenophobia, antisemitism and intolerance, including through the protection and promotion of the rights of individuals belonging to minority groups and by providing advice and information to national authorities. In General Policy Recommendation No. 2 (GPR 2), ECRI invites member States to consider setting up such specialised bodies, where they do not already exist, and outlines a number of basic principles concerning their nature and composition, functions and specific activities.³⁶⁷ The standards elaborated in ECRI's country-by-country work have provided useful practical guidelines on the role and functioning of specialised bodies, including the need for close and ongoing reviews of the work of such bodies.³⁶⁸

i. Statutes establishing specialised bodies

The composition, areas of competence, statutory powers, accountability and funding of specialised bodies should be determined by terms of reference clearly set out in a constitutional or other legal text.

ii. Alternative forms of specialised bodies

Specialised bodies may take various forms, according to the legal and administrative traditions of the country concerned, for example, national commissions for racial equality, ombudspersons against ethnic discrimination, and centres or offices for combating racism and promoting equal opportunities.

GPR 2 also reflects the fundamental principle that, if the potential impact of such bodies is to be maximised, their composition should reflect the diversity of wider society.

Federal Commission against Racism, Switzerland

The Federal Commission is mandated to investigate racial discrimination and encourage understanding between different ethnic and religious groups. It provides advice and support to the federal authorities concerning legislation, legal provisions and policy. It also offers support, guidance and mediation services to individuals.

iii. Functions and responsibilities of specialised bodies

According to GPR 2, the functions and responsibilities of specialised bodies should include:

- monitoring the content and effect of legislation and executive acts, advising the authorities on these matters and, where necessary, making proposals for modifications;
- providing aid and assistance to victims, including legal aid;

³⁶⁷ See also, in this respect, the Principles laid down by the first international meeting of National Institutions for the Promotion and Protection of Human Rights, Paris, 7-9 October 1991.

³⁶⁸ For further information on this aspect of ECRI's country-by-country work, see Section II A 2 (f) on Specialised bodies and other institutions.

- obtaining evidence and information, considering specific cases and seeking settlements either through conciliation or by having recourse to courts;
- providing advice and training to relevant groups, and awareness-raising generally on discrimination;
- supporting organisations with similar objectives and taking account of their concerns.

ECRI has noted that the activities of specialised bodies, which exercise competently the functions and responsibilities listed above, can complement the work of international bodies – such as ECRI – in combating racism and intolerance at national level.

Equal Treatment Commission, Netherlands

The Equal Treatment Commission is an independent institution with the mandate to receive and deal with individual complaints about unequal treatment. It has the right to actively investigate its cases and all concerned parties are obliged to provide requested information. Though its decisions are not legally binding, they have a high moral authority and are usually followed.

iv. Administration and functioning of specialised bodies

GPR 2 makes clear that the composition of specialised bodies should reflect the diversity of society in the member State concerned. Independence and accountability are also crucial operating principles for the effective operation of such bodies. Such bodies should operate without the interference of the State and be provided with sufficient funds to properly carry out their functions. They should have the freedom to appoint their own members and staff, and safeguards concerning the dismissal or non-renewal of appointments of members should be set out clearly in the terms of reference of the body.

Specialised bodies have a responsibility to ensure that they are meaningful institutions for those whose rights they are established to protect. They should ensure that their offices and services are accessible, including through setting up local offices where required, in order to reach those most affected.

Specialised bodies should also be accountable for the impact and political independence of their work. While member States should ensure that specialised bodies have an appropriate level of access to government departments and information, the bodies themselves should seek to preserve their credibility vis à vis both national authorities and civil society by maximising the quality of research, information and advice provided.

c) Combating racism and intolerance against Roma/Gypsies

Members of Roma/Gypsy communities are particularly vulnerable to racial discrimination and intolerance. Persisting prejudices against them throughout Europe lead to many forms of exclusion from economic and social life, and to regular violations of their fundamental rights. ECRI has made specific recommendations advocating the development of adequate protection for this group in General Policy Recommendation No. 3

(GPR 3). It suggests that racism and intolerance against this group be combated in a number of ways, including through legal measures, training and enhanced participation of members of Roma/Gypsy communities in civil society.

As a starting point, ECRI has recommended that members of Roma/Gypsy communities be guaranteed the right to choose the name by which their community is officially referred to.



Roma/Gypsy
camp in Kosovo

GPR 3 also underlines that the provisions of GPR 1 are particularly relevant to members of Roma/Gypsy communities, notably in relation to measures set out in national criminal, civil and administrative law to counter racism. GPR 3 emphasises that relevant international instruments should be signed and ratified by member States, including the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages.

Discrimination and discriminatory practices, particularly in the areas of housing, education and employment, should be combated through legislation. Appropriate steps should also be taken to prevent discrimination against Roma/Gypsies with regard to access to citizenship and the right to asylum. Discrimination against members of Roma/Gypsy communities by public representatives or public authorities should be subject to appropriate legal action under criminal or civil law. Members of Roma/Gypsy communities who experience such discrimination should have access to the courts, including through the provision of free legal aid. No degree of impunity as regards discrimination against Roma and Gypsies should be tolerated, and justice must be fully and promptly done in cases involving violations of their fundamental rights.

Combating inter-ethnic violence, Romania

To address a rising tide of violence and intimidation against Roma communities, a Romanian NGO brought together key local actors, including Roma, police, mayors, local government officials and NGOs to promote a more co-ordinated response to the abuse suffered by Roma. In many areas these informal discussion panels have developed into permanent structures with an enhanced capacity to engage with public authorities and to launch new projects in favour of Roma. The initiative had a strong campaigning function and provided legal support to Roma victims of racism and intolerance.

GPR 3 also recommends that positive measures should be taken with a view to preventing future violations of the rights of this vulnerable group. In this context, arrangements should be made for dialogue and training to promote cultural understanding, and awareness of prejudice, for persons involved in the administration of justice, including the police and local authorities. Training should also be provided for members of the Roma/Gypsy community, in particular on their legal rights and the functioning of the legal system. Roma/Gypsy children should be guaranteed equal access to education and the curricula of schools should accurately reflect the history and culture of this group.

Awareness-raising about Roma/Gypsies should be encouraged in the public at large and in the media in particular, as the perpetuation of negative stereotypes can help sustain discrimination against members of these communities.

Questions related to travelling within a country, including town planning issues should be resolved in a way which does not hinder the lifestyle of those concerned. Institutional arrangements should be developed to ensure that Roma/Gypsy communities can play an active role in the decision-making process at national, regional and local level.

GPR 3 also emphasises that the activities of Roma/Gypsy civil society organisations should be supported, including those NGOs which provide legal assistance. Confidence-building measures can help to foster genuinely pluralistic societies and to promote peaceful co-existence. Particular attention should be paid to the situation of Roma/Gypsy women who may be affected by “double discrimination” on account of both their community affiliation and their gender.

Roma self-help bureau, Bulgaria

Several self-help bureaus have been established throughout Bulgaria by local Roma/Gypsy organisations with the aim of developing an integrated programme of community-based work. The objectives of the initiative are to increase the educational level of Roma children, address the high levels of unemployment among Roma/Gypsies and develop solutions with local authorities and other civic associations. Activities have included the establishment of a youth centre, counselling and mediation, and assistance with training and recruitment.

Many of ECRI's country-by-country reports have identified the situation of Roma/Gypsies as an area of particular concern and have stressed the importance of training and counselling to help integrate Roma/Gypsies and facilitate access to employment and education.³⁶⁹

d) National surveys on the experience and perception of discrimination and racism from the point of view of potential victims

Victim or potential victim surveys are increasingly seen as a methodologically-sound way of establishing a fuller understanding of the nature and causes of crime. The importance of reliable data on racist and discriminatory acts and on the situation of minority groups is underlined in ECRI's General Policy Recommendation No. 4 (GPR 4).

Building on the suggestion in General Policy Recommendation No. 1 that relevant data be collected, ECRI proposes that statistical data should be supplemented by surveys among the general population and targeted surveys which ascertain the experiences and perceptions of potential victims of racist and discriminatory acts. The aim of such surveys is to gain a picture of the problems of racism and intolerance including from the perspective of various vulnerable groups. GPR 4 contains detailed suggestions concerning the organisation, design and follow up of such surveys.

Poll of immigrant groups, Sweden

An opinion poll was conducted by the Swedish Ombudsperson against Ethnic Discrimination on the experience of immigrants and their perceptions of attitudes towards them. The poll focussed on the experiences of victims and potential victims selected from four separate immigrant groups and the subsequent report was presented to various bodies including police and labour organisations. The exercise was subsequently repeated targeting different groups, in addition to the same control groups, to provide a comparative measurement of statistics on changing levels of discrimination.

i. Organisation of surveys

The selected target groups may include immigrants, national minorities and other vulnerable groups, based on information already available about discrimination faced by such groups. However, some of the most vulnerable groups may also be the most difficult to reach and GPR 4 stresses that, if reliable statistics about such groups are not available, alternative means of identifying and reaching the pertinent respondents should be found.

ii. Survey design

To a large extent, the quality of a survey's design will determine the credibility of its findings, and the extent to which those findings can be deployed to address any lacunae

³⁶⁹ For further information on this aspect of ECRI's country-by-country work, see Section II A 2 (p) (i) on Roma/Gypsy communities.

identified. GPR 4 suggests that questions for minority groups raised in the surveys should include topics such as:

- the experience of unfair treatment in contacts with public authorities such as police, health, welfare and education authorities and housing agencies, and private institutions such as banks, restaurants and shops;
- perceived opportunities to participate equally in society, awareness of measures designed to improve the situation of the group and success achieved in areas such as education, training and employment;
- general attitudes of the selected groups towards wider society, including the trust placed in institutions, attitudes towards immigration and asylum policies, relationships with other groups and their overall identification with the host country and/or country of origin.

iii. Follow-up

The impact of potential victim surveys can be maximised if they are part of a data-gathering strategy which includes follow-up surveys to gauge changing patterns of discrimination or to address the situation of different target groups.

More generally, the follow up to potential victim surveys should include using the findings to evaluate and elaborate policies which take into account the situation of the target groups, and to increase awareness and understanding about the problems faced by such groups.

Study of the root causes of xenophobia, Austria

This scientific study was supported by the Austrian Ministry of Science, Research and Art. The study included a demographic analysis of migration movements, and an examination of political and economic trends including unemployment patterns. On the basis of this research, counter strategies and positive measures to overcome xenophobia were elaborated.

In the course of its country-by-country work ECRI has highlighted the importance of gathering accurate base-line data and conducting national surveys to ensure the effective monitoring of the situation of vulnerable groups.³⁷⁰

e) Combating intolerance and discrimination against Muslims

The freedom of religion guaranteed by international human rights instruments extends to all religions and includes a prohibition of discrimination towards particular religions and religious communities. ECRI is concerned by indications that religious intolerance and prejudice against minority Muslim communities is increasing in European countries, and that Islam is sometimes portrayed inaccurately on the basis of hostile stereotyping, which can reinforce discrimination.

³⁷⁰ For further information on this aspect of ECRI's country-by-country work, see Section II A 2(m) on Monitoring country situations.

General Policy Recommendation No. 5 (GPR 5) proposes a number of measures to address discrimination against such communities, including those set out below.

- steps should be taken to ensure that Muslim communities are not discriminated against and that unnecessary obstacles to the practice of their religion are removed, including any administrative bars to the construction of places of worship;
- sanctions should be imposed in cases of discrimination on the grounds of religion and measures taken to eliminate such discrimination in the areas of access to citizenship, education and employment;
- employers' "codes of conduct" to fight religious discrimination in the workplace should be encouraged;
- steps should be taken to combat the social exclusion of Muslims and particular attention paid to discrimination against Muslim women;
- attention should be paid to the image portrayed of Islam and Muslim communities in the media and in school curricula;
- dialogue between minority Muslim communities and wider society should be facilitated, and measures designed to combat discrimination against members of this community should be monitored and evaluated.

GPR 5 was published some eighteen months before the terrorist attacks of 11 September 2001. Since then, as ECRI notes in its Annual Report on activities for 2002, the problem of Islamophobia has become more acute in several countries, including within certain public institutions.³⁷¹ It follows that the implementation of the measures proposed in GPR 5 remains crucially important.

In addition to its general country-by-country work on minorities and other religious groups, ECRI's country reports have encouraged member States to take specific measures to tackle any emerging negative climates of opinion concerning Muslim communities.³⁷²

f) Combating the dissemination of racist, xenophobic and antisemitic material via the Internet

Despite the positive potential of new information technologies, there are disturbing trends in the use which is being made of the Internet. Although it offers the opportunity to spread information about human rights to all corners of the world, a single click can now also send messages of racial hatred and incitement to violence to a virtually unlimited number of recipients. ECRI is concerned, for example, about the growing dissemination of antisemitic material via the Internet. General Policy Recommendation No. 1 underlines that incitement to racist acts through the electronic media should be categorised as a criminal offence under national law.

³⁷¹ Annual Report on ECRI's activities covering the period from 1 January to 31 December 2002, ECRI, 20 March 2003, CRI (2003) 23, at p 8.

³⁷² For further information on this aspect of ECRI's country-by-country work, see Section II A 2 (p) (i) (b) on Muslim Communities.

This issue has been expanded upon in General Policy Recommendation No. 6 (GPR 6), which deals specifically with the distribution of material via the Internet. GPR 6 acknowledges the truly international nature of the Internet and the fact that those in a position to influence the content of websites can contribute to the fight against racism and intolerance. It emphasises that all international work and instruments concerning the regulation of the Internet should include specific reference to the elimination of racist, xenophobic and antisemitic material. Moreover, international co-operation, including between law enforcement agencies, should be strengthened and sustained efforts made to train law enforcement officials in this area. National legislation should deal specifically with racist offences committed via the Internet and those responsible should be prosecuted.

As ECRI's own website demonstrates, the Internet also provides a powerful medium for the communication of positive, anti-discrimination messages.³⁷³ GPR 6 recognises this and urges that, whenever possible, anti-discrimination initiatives on the Internet should be supported. As is also emphasised in ECRI's country-by-country reports, self-regulation by the Internet industry should be encouraged and the responsibility of website providers clarified with respect to the distribution of racist material.³⁷⁴

g) National legislation to combat racism and racial discrimination

In all of its General Policy Recommendations and country-by-country work, ECRI attaches a very high degree of importance to the adoption and implementation of effective legal and administrative measures at a national level to combat racism and racial discrimination. General Policy Recommendation No. 7 (GPR 7) proposes that member States enact such legislation where it does not already exist or is incomplete. The Recommendation calls for a strengthening of legal tools to protect individuals from acts of racism and discrimination.

Relevant international legislation and pre-existing international standards were taken into account by ECRI when drawing up GPR 7. While GPR 7 draws upon the guidance to be found in such norms, it adopts a distinctive, and sometimes innovative, approach. Among the most significant innovations are the inclusion of nationality, religion and language among the grounds upon which discrimination should be prohibited. The Recommendation proposes that the application of the prohibition of discrimination be extended to a very broad range of areas, including "the activities of the police and border control officials; the attribution of more extensive powers to national specialised bodies to combat racism and racial discrimination; the establishment of a positive duty on public authorities to promote equality and to prevent discrimination in carrying out their functions".³⁷⁵

³⁷³ www.coe.int/ecri.

³⁷⁴ For further information on this aspect of ECRI's country-by-country work, see Section II A 2 (o) (ii) on Self-regulation.

³⁷⁵ Annual Report on ECRI's activities covering the period from 1 January to 31 December 2002, CRI (2003) 23, paragraph 20, page 17.

Such a comprehensive approach is fully consistent with ECRI's mission to support and promote national legislation which offers sufficient protection against all contemporary forms of racism and racial discrimination. Given that certain Council of Europe member States are reforming their current anti-discrimination legislation, GPR 7 offers a template for future legislation which could provide the widest possible degree of protection for potential victims of racism and racial discrimination. As Joseph Voyame, the Chair of the working group which drafted GPR 7 has commented, "the Recommendation is a reference text, which sets out all that needs to be done if we want to go as far as possible and be truly effective."³⁷⁶

GPR 7 initially sets out a series of definitions used in the Recommendation. It defines "racism" as meaning the belief that a ground such as race, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the superiority of a person or group of persons. The explanatory memorandum of GPR 7 makes clear that the term "racism" should be understood as including xenophobia, antisemitism and intolerance. The inclusion of the grounds of language, religion and nationality in this definition ensures that it encompasses all the phenomena covered in ECRI's mandate. GPR 7 also provides further clarity on the definition of "direct racial discrimination", which is taken to mean any differential treatment on the grounds of race, colour, language, religion, nationality or ethnic origin, which has no objective or reasonable justification. "Indirect racial discrimination" is defined by GPR 7 as meaning cases where an apparently neutral factor such as a provision, criterion or practice cannot as easily be complied with, or disadvantages, persons belonging to a group designated by the grounds of race, colour, language, religion, nationality or ethnic origin, unless this factor has an objective or reasonable justification.

The measures proposed by ECRI in GPR 7 are intended to be compatible with all types of legal systems, and are set out in an integrated series of components covering constitutional, civil and administrative, criminal and other legal provisions. ECRI has indicated that it believes that such an integrated approach is essential if States are to engage with these issues "in a manner which is as exhaustive, effective and satisfactory from the point of view of the victim as possible".³⁷⁷

i. Constitutional law

National Constitutions can provide a bedrock of legal protection against racism and intolerance. They should enshrine the principle of equal treatment, the commitment of the State to promote equality and the right of individuals to be free from discrimination on grounds such as race, colour, language, religion, nationality or national or ethnic origin. Exceptions to the principle of equal treatment may be established by law provided they do not constitute discrimination. However, GPR 7 makes clear that any restrictions on the exercise of freedom of expression, assembly and association, even those purportedly designed to combat racism, must themselves be in accordance with

³⁷⁶ Interview with Joseph Voyame, Swiss member of ECRI.

³⁷⁷ Annual Report on ECRI's activities covering the period from 1 January to 31 December 2002, CRI (2003) 23, paragraph 19, page 17.

the jurisprudence of the European Court of Human Rights. ECRI's country-by-country reports underline the requirement of adequate substantive content, practical application and implementation of constitutional provisions to prohibit discrimination.³⁷⁸

ii. Civil and administrative law

Anti-discrimination provisions should be accorded a prominent place in the laws which govern the practice of institutions and relations between citizens. In particular, the law should clearly define and prohibit direct and indirect racial discrimination, while allowing for the adoption of temporary special measures to compensate for disadvantages suffered by particular groups. Acts of discrimination should be designated as including acts such as segregation; discrimination by association; announced intention to discriminate; and instructing, inciting or aiding another to discriminate.

The prohibition on discrimination should apply to public bodies, private persons and institutions, including in the fields of employment, education, training, housing, health and the provision of goods and services. Public authorities should have a particular duty to promote equality, and to prevent discrimination. The law should place public authorities under an obligation to ensure that third parties to whom they award contracts, loans, grants or other benefits respect and promote anti-discrimination policies. Violation by third parties of such conditions may permissibly result in the termination of such awards.

Easily accessible judicial and/or administrative procedures should be available to all victims of discrimination, including fast-track procedures in urgent cases. If a court can make a *prima facie* presumption from evidence presented that an act of discrimination has taken place, it should be incumbent on the person or organisation accused of such discrimination to prove that it did not take place. The law should provide for appropriate sanctions in cases of discrimination and for the compensation of victims.

GPR 7 also emphasises that laws and administrative provisions should be regularly reviewed and those found to be discriminatory should be amended. Discriminatory provisions in individual or collective agreements should be declared null and void and, when violations present themselves, judicial and/or administrative remedies should be available to all victims of discrimination.

GPR 7 also recognises that civil and administrative law can play a role in combating organisations which promote racism. It emphasises that such organisations should not benefit from public funding, and indicates that the law should provide for the possible dissolution of such organisations.

Through its country-by-country reports, ECRI examines the civil and administrative law of member States and encourages States to periodically review the provisions of their anti-discrimination legislation.³⁷⁹

³⁷⁸ For further information on this aspect of ECRI's country-by-country work, see Section II A 2 (b) on Constitutional provisions and other basic provisions.

³⁷⁹ For further information on this aspect of ECRI's country-by-country work, see Section II A 2 (d) on Civil and administrative law.

iii. Criminal law

According to GPR 7, the criminal law should penalise public incitement to violence, hatred and discrimination. When committed intentionally against a person or group on the grounds of race, colour, language, religion, nationality, or national or racial origin, public insults and defamation or threats against an individual or group on any of the above grounds should also be criminalised. Similarly, the public expression with a racist aim of a 'superiority ideology' which denigrates a groups or groups on any of the above grounds should be sanctioned by the law.

Genocide, the most extreme manifestation of racial hatred, should be penalised by the criminal law and the public denial, trivialisation, justification or condoning on racist grounds, of genocide, crimes against humanity, or war crimes should be treated as a criminal offence and action taken accordingly.

Clearly, participation in proscribed activities of racist organisations should be penalised by law, as should the distribution of racist material and aiding or abetting the commission of racist offences. In GPR 7, as in its country-by-country work, ECRI insists that, for all other criminal offences, racist motivation should constitute an aggravating circumstance. Racial discrimination in the exercise of public office is a serious abuse of power and should be prohibited by law.

To be meaningful, the standards set out in the criminal law should be accompanied by effective, proportionate and dissuasive sanctions, in addition to ancillary and alternative sanctions. The potentially-deterrent effect of the existence of effective criminal sanctions in this area has also been emphasised in ECRI's country-by-county work.³⁸⁰

iv. Other legal provisions

In line with ECRI's General Policy Recommendation No. 2 on specialised bodies, GPR 7 suggests that the law should provide for the establishment of national specialised bodies to combat racism and discrimination. It underlines the requirement of competence in the areas of assistance to victims; investigation powers; the right to initiate and participate in court proceedings; monitoring legislation and giving advice to national authorities; awareness-raising and the promotion of policies and practices to ensure equal treatment. Other interested organisations, such as trade unions, should be similarly entitled to make civil or criminal complaints. Independent bodies mandated to investigate alleged acts of discrimination committed by police officers, border officials, army personnel and prison officials should also be established.

Free legal aid should be provided for victims of racism or discrimination, including the provision of a court appointed lawyer and (where necessary) an interpreter. Victims of racial discrimination and/or those giving evidence in such cases should be protected from acts of retaliation.

³⁸⁰ For further information on this aspect of ECRI's country-by-country work, see Section II A 2 (c) on Criminal law.

3. Broadening the scope of the non-discrimination provisions of the European Convention on Human Rights

Article 14 of the European Convention on Human Rights (ECHR) only prohibits discrimination in relation to rights already guaranteed by the Convention.³⁸¹ In consequence, a number of other rights, including many economic and social rights, are excluded from its scope. The purpose of Protocol No. 12 to the ECHR, which was adopted by the Committee of Ministers of the Council of Europe in June 2000,³⁸² is to include a more general prohibition of discrimination in the ECHR.

ECRI was instrumental in providing the impetus for this reinforcement of the ECHR. Following a review of international instruments dealing with all forms of discrimination, ECRI suggested to the Committee of Ministers that the protection afforded by the ECHR be strengthened by an additional protocol broadening the scope of the application of Article 14 of the ECHR. ECRI argued that the establishment of a right to protection from racial discrimination as a fundamental human right would be a necessary counterpart to its efforts to combat racism and intolerance. Having regard to the ECRI proposal, in April 1996 the Committee of Ministers instructed the Steering Committee for Human Rights to examine the feasibility of introducing such an additional protocol into the ECHR. In October 1997, the Steering Committee recommended that the adoption of an additional protocol was advisable and feasible.



The Committee of Ministers consequently approved the drafting of an additional protocol to the ECHR which would broaden in a general manner the field of application of Article 14 and include a non-exhaustive list of discrimination grounds. The Steering Committee elaborated the draft protocol in close consultation with ECRI. The new provision, which was opened for signature by Council of Europe member States on 4 November 2000 significantly widens the scope of the protection offered by the ECHR and has the potential to make an important contribution to the fight against racism and intolerance in Europe.

³⁸¹ Article 14 of the ECHR States that "the enjoyment of *the rights and freedoms set forth in this Convention* shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status" [emphasis added].

³⁸² Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Council of Europe, 4 November 2000, ETS 177.

Protocol No. 12 contains a formal guarantee that “any right set forth by law” may be enjoyed without discrimination.³⁸³ According to the explanatory report to the Protocol, the notion of any right “set forth by law”³⁸⁴ refers to “any right specifically granted to an individual under national law”. The explanatory report also indicates that, although the word “law” may also cover international law “this does not mean that this provision entails jurisdiction for the European Court of Human Rights to examine compliance with other international instruments”.³⁸⁵

The other significant innovation in Protocol No. 12 is that it places a specific duty on States to ensure that no one is discriminated against by a public authority.³⁸⁶ The explanatory report to the Protocol specifies that this is intended to prohibit discrimination:

- (ii) “in the enjoyment of a right which may be inferred from a clear obligation of a public authority under national law, that is, where a public authority is under an obligation under national law to behave in a particular manner;
- (iii) by a public authority in the exercise of discretionary power (for example, granting certain subsidies);
- (iv) by any other act or omission by a public authority (for example, the behaviour of law enforcement officials when controlling a riot)”.³⁸⁷

Articles 1 and 2 of Protocol No.12 are to be regarded as additional articles to the ECHR.³⁸⁸ Article 1 of the Protocol encompasses and goes beyond the scope Article 14 of the ECHR, but it will not amend Article 14 which will continue to apply. The Protocol will enter into force once ten Council of Europe member States have ratified it.³⁸⁹

In its country-by-country reports and discussions with national authorities, ECRI strongly urges member States which have not yet done so to ratify Protocol No. 12.

4. European and World Conferences Against Racism

Following a decision of the United Nations General Assembly, the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance was held in Durban, South Africa in September 2001. It represented an opportunity for the international community to reaffirm its commitment to the elimination of racism and to focus on those areas where action had been insufficient and more concerted efforts were required. In preparation for the World Conference, regional meetings took place in

383 Article 1, paragraph 1 of Protocol No. 12 reads: “The enjoyment of *any right set forth by law* shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status” [emphasis added].

384 Explanatory report to Protocol No. 12, at paragraph 22 (i).

385 Explanatory report to Protocol No. 12, at paragraph 29.

386 Article 1, paragraph 2 of Protocol No. 12 reads: “No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1”.

387 Explanatory report to Protocol No. 12, at paragraph 22 (ii) to (iv).

388 See Article 3 of Protocol No. 12.

389 The current state of ratifications of Protocol No. 12 can be found at: <http://conventions.coe.int/>.

Santiago, Chile; Strasbourg, France; Tehran, Iran and Dakar, Senegal, with preceding NGO fora, all of which received funding from the European Union. ECRI prepared a position paper for the European Conference, and its secretariat was responsible for organising the Conference and co-ordinating the General Conclusions and the Political Declaration of the Conference, which formed the European contribution to the World Conference.

a) Preparations for the European and World Conferences Against Racism



European Conference against Racism
11-13 October 2000

In preparation for the European Conference and the World Conference, position papers were prepared by ECRI and the European Union Monitoring Centre on Racism and Xenophobia. ECRI's position papers set out detailed analyses and recommendations for the four working groups of the Conference, as summarised below.³⁹⁰

i. Legal protection

Certain gaps in legal protection exist in the international standards, including in the European Convention on Human Rights (ECHR) which contains no general prohibition of discrimination. The adoption of a new Protocol to the ECHR containing a general clause prohibiting discrimination would demonstrate Europe's commitment to the fight against racism.

The recognition which the international legal order grants to opposing racism is not fully reflected at a national level in the day-to-day reality on the ground. In order to reduce this discrepancy, States should take positive measures to protect vulnerable people and report on the effectiveness of such measures. To ensure the effective implementa-

³⁹⁰ "ECRI position papers" for the European Conference against Racism "All Different All Equal: From Principle to Practice", August 2000, EUROCONF (2000) 5.

tion of anti-discrimination measures, a good practice to follow is to ensure that the criminal prosecution of racist offences is consistently undertaken and that accurate statistics are collected on offences and cases prosecuted.

ii. Policies and practices

Racism in the criminal justice system, including within the police and prosecuting authorities, and in the provision of public services has not been matched with consistent and vigorous policies to counter such problems.

The creation of specialised bodies at a national level to combat racism can be an effective means of implementing anti-racism legislation and policies. Positive measures should be taken in the field of employment and housing to ensure equality of opportunity, including through "codes of good conduct" and special training programmes. Racially-motivated violence requires specific policies, including the development of an information policy for victims and potential victims, and the collection of reliable statistical data.

Practical measures should be undertaken to ensure that vulnerable groups such as Roma/Gypsies and minority religious groups such as Muslims are protected from racist violations, including through the establishment of national, regional and local consultative mechanisms.

iii. Education and awareness-raising

The importance of human rights and anti-racism education is not adequately reflected in terms of priorities and resources, and needs arising from religious, linguistic and other forms of diversity are rarely taken into account. Human rights education should be included in school curricula, and text books and syllabi should be revised to reflect diversity. Special training courses should be initiated to ensure that key professionals in contact with minority groups are aware of problems related to racism and discrimination. Organisations which carry out awareness raising in this area, such as human rights NGOs should be supported, and the Internet used to create education networks against racism.

iv. Information, communication and the media

Notwithstanding positive developments and examples of good practice, certain media outlets continue to diffuse negative racist messages and, in some cases, incitement to racial hatred. Particular emphasis should be placed on training for journalists in professional techniques and ethical principles, and on ensuring access to the media for minority groups. The use of new technologies, such as the Internet, by individuals and groups for the purposes of disseminating racist messages is a serious problem, addressed in detail by ECRI in its General Policy Recommendation No. 6.³⁹¹

391 For further information concerning General Policy Recommendation No. 6, see Section II B 2 (f).

b) European Conference against Racism

The European Conference Against Racism, entitled "All different, all equal: from principle to practice", took place in Strasbourg, France in October 2000 and was organised by the Council of Europe. 570 participants attended, including government ministers and officials, representatives of intergovernmental organisations including the Council of Europe, the European Union and United Nations bodies, and representatives of NGOs and civil society. A Political Declaration and General Conclusions, forming the contribution of Europe to the World Conference, were adopted by ministers of Council of Europe member States. The principal elements of the Political Declaration and the General Conclusions are summarised below.



Ms Mary Robinson, United Nations High Commissioner for Human Rights at the European Conference against Racism, October 2000

i. Political Declaration

The Political Declaration identified racism and racial discrimination as serious violations of human rights which must be combated by all lawful means. The Declaration noted that violent incidents of racism continued to occur in Europe, normally targeting particularly vulnerable people including migrants, asylum-seekers, refugees, displaced persons, indigenous peoples and Roma/Gypsies. It drew attention to the problems of hostility expressed by some elements of the media and politicians towards vulnerable groups, support for xenophobic political parties and the use of new communication technologies in the dissemination of racist messages. Member States committed themselves to take further steps to eliminate racism, including through the following means:

Legal measures, including ratifying and implementing at a national level relevant international standards; assuring adequate support and assistance to victims of racism; bringing to justice those responsible for racist acts; and taking action against incitement to racial hatred.

Policy initiatives, including establishing national action plans and national institutions to combat racism; integrating a gender dimension in policies on racism and empowering women from vulnerable groups; and countering social exclusion by providing for equal access to education, employment and housing.

Education and training, including implementing training and awareness-raising programmes for public officials such as the police, judges, prison officials and immigration officers.

ii. General Conclusions

Legal protection, including accepting and fully implementing relevant international instruments; providing comprehensive national anti-discrimination legislation; consistently applying the law and providing effective remedies; and imposing a positive duty on public authorities to promote equality and assess the impact of policies.

Policies and practices, including mainstreaming the fight against racism through developing comprehensive national action plans; integrating a gender perspective in all policies; ensuring the participation of vulnerable groups in public affairs and decision-making; refusing to support racist or xenophobic political parties; ensuring equality of opportunity in the fields of employment and social affairs; and monitoring policies and programmes to assess their effectiveness.

Education and awareness-raising, including ensuring access to education without discrimination; reinforcing human rights and anti-racist education in schools and other formal education; training professional groups frequently in contact with vulnerable groups; undertaking public information campaigns addressed in particular to young people; and working with NG Os to achieve these goals.

Information, communication and the media, including providing free access to public sources of information on legal rights; participating in national, regional and international monitoring mechanisms; supporting information networks against racism; encouraging media outlets accurately to reflect multicultural societies; developing self-regulatory codes of conduct; and combating hate speech and racist material on the Internet.

The General Conclusions of the European Conference make specific reference to the work of ECRI, including General Policy Recommendations No. 2 on specialised national bodies, No. 3 on combating racism and intolerance against Roma/Gypsies and No. 5 on combating intolerance and discrimination against Muslims. The Conclusions encourage member States to take fully into account the recommendations of ECRI, particularly country-specific proposals. The European Conference also called on member States to consider 'how to best reinforce the action of ECRI'.

c) World Conference against Racism

Together, the Political Declaration and General Conclusions of the European Conference represented the European regional input to the World Conference against Racism, in which ECRI participated as part of the Council of Europe delegation. From 31 August to 8 September 2001, 2300 representatives of 163 countries, officials of international and regional organisations, and over 4000 NGO representatives gathered in Durban to address the work which remained to be done to put an end to racism and intolerance. After difficult negotiations, the Declaration and Programme of Action of the World Conference were adopted by consensus in January 2001.³⁹²

The World Conference documents recognise that the primary responsibility for combating the evils of racism, xenophobia and related intolerance rests with States, who should therefore actively promote equality of opportunity, including through developing national action plans against racism. Detailed provisions cover issues such as improving assistance to victims of racism, including Africans and people of African descent, indigenous peoples, migrants and refugees. The Conference agreed on the need for strengthened national legislation and more effective remedies for victims of racism including through legal assistance, national support programmes and the provision of remedies and compensation.

Detailed measures of prevention, education and protection were identified including – at a national level – legislative, judicial and administrative provisions; education and awareness raising; and information and media strategies. The importance of basing corrective measures on accurate research and data was emphasised, as was the need to counter racism on the Internet. Strategies to achieve full equality were agreed by the Conference, including through the implementation of international instruments and co-operation with a wide variety of bodies including international organisations, civil society and non-governmental organisations, youth and the private sector.

Concerning the area of activities of bodies such as ECRI, the Declaration recognises the important role played by regional entities in monitoring and raising awareness about intolerance and discrimination. The Programme of Action urges States to support the activities of such bodies in their work of assessing the situation of racism, collecting and disseminating information, including through highlighting examples of good practice, organising awareness-raising campaigns and developing proposals, solutions and preventive measures.

As the United Nations High Commissioner for Human Rights commented at the time of the adoption of the Declaration and Plan of Action, "the real question now is the

³⁹² Report of the World Conference against Racism, Racial Discrimination, Xenophobia, United Nations General Assembly Document A/C.ONF.189/12, 25 January 2002.

credibility of the international community in living up to the commitments... now is the time for implementation.”³⁹³

d) Follow-up to the European and World Conferences against Racism

ECRI has committed itself to “fully play its role within the Council of Europe in joining collective efforts at European level in ensuring the action needed to implement the recommendations of the World Conference”.³⁹⁴ In pursuance of this goal, ECRI has undertaken activities under each of the three main strands of its work: country-by-country work; work on general themes and work on relations with civil society, as described in Sections II A, B and C of this report. A number of ECRI’s key achievements and activities to follow up the conferences are highlighted below.

The Political Declaration and General Conclusions of the European Conference called upon member States to reinforce the action of ECRI. In response, a new Statute for ECRI was adopted in June 2002, strengthening in particular its role as a human rights monitoring mechanism and guaranteeing the principle of the independence and impartiality of members of ECRI.

Both the European and World Conferences recommended that action be taken to enhance legal protection for victims and potential victims of racism. For its part, ECRI co-ordinated the finalisation and adoption of Protocol No. 12 to the ECHR, which includes a general prohibition of discrimination. When it enters into force, the Protocol will significantly boost the scope of legal protection afforded under the ECHR to all persons present on the territories of Council of Europe member States.³⁹⁵

As regards activities at national level to follow up the European and World Conferences against Racism, ECRI has encouraged member States to elaborate national action plans against racism, one of the key recommendations of both conferences. ECRI has provided encouragement and guidance concerning the elaboration of national plans through each of the three main strands of its work: country-by-country work; work on general themes and relations with civil society³⁹⁶.

In particular, in its second round reports on member States, ECRI noted efforts already underway in some member States to develop national action plans and encouraged those States not already involved in such an exercise to commence work on the elaboration of a plan. Specific suggestions concerning national action plans have been offered by ECRI in the context of its country-by-country work and information sessions held in member States in the context of its work on relations with civil society.

393 Mary Robinson, 28 January 2002, United Nations press release on the General Assembly Third Committee, 28 January 2002, 56th Meeting.

394 Annual Report on ECRI’s activities concerning the period from 1 January to 31 December 2001, CRI (2002) 23, Strasbourg, May 2002.

395 For further information concerning ECRI’s work towards the broadening of the scope of the application of Article 14 of the ECHR, see section II B 3 of this report.

396 For further information concerning ECRI’s country-by-country work and work on relations with civil society, see sections II A and II C of this report respectively.

In addition, ECRI's General Policy Recommendations and examples of "good practices" publications have provided a source of guidance and resource material to national authorities, NGOs and other bodies engaged in the preparation of national action plans. Of particular note in this connection is ECRI's General Policy Recommendation No. 7, which contains specific proposals regarding national legislation to combat racism.³⁹⁷

A central concern of both conferences was developing activities in the area of education and awareness-raising. ECRI has organised information and awareness-raising campaigns on racism and intolerance, including through its website, and a package of educational materials for young people. ECRI has also participated in the formal training of human rights professionals, including in the European Masters Degree in Human Rights and Democratisation. Information sessions, as mentioned above, have been held in member States to coincide with the publication of country-by-country reports. The awareness-raising work of NGOs has been supported by ECRI and specialised consultations provided for such organisations.

³⁹⁷ For further information concerning ECRI's General Policy Recommendations and examples of "good practices" see Section II B 2 of this report.

C RELATIONS WITH CIVIL SOCIETY

1. Preliminary remarks

Work on relations with civil society is the final of the three main strands of ECRI's programme of activities, the other two being country-by-country work and work on general themes. As already mentioned, the three strands of ECRI's work are closely linked and are intended to be mutually reinforcing. It is therefore important not to consider ECRI's work on relations with civil society in isolation, but rather in the context of its country-by-country work and work on general themes, as described in Sections A and B of this review.

ECRI has developed a detailed Programme of Action aimed at enhancing and strengthening its relations with civil society and raising awareness within civil society of its work and activities. The Programme has been developed in recognition of the crucial role that national institutions, other civil society organisation and non-governmental organisations can play in combating racism and intolerance.

This section contains an overview of activities undertaken by ECRI, pursuant to its Programme of Action on relations with civil society.

2 ECRI's Programme of Action on relations with civil society

The Programme of Action was adopted at ECRI's 27th plenary meeting in March 2002. It represents a consolidation of the various strands of ECRI's work with civil society and provides a platform for the development of new activities. The Programme is intended to be complimentary to other activities of the Council of Europe related to the promotion of tolerance, including in areas such as education, culture and human rights awareness raising. The main elements of the Programme of Action are set out below, together with the recommendations for its implementation that have been drawn up by the ECRI working group on relations with civil society. ECRI suggests that member States play a full part in promoting dialogue with civil society and facilitate the practical application of the Programme.

a) Information sessions

ECRI has undertaken to organise information sessions in member States when its country-by-country reports are published.³⁹⁸ These sessions have taken the form of "Round Tables", with the participation of various civil society partners including non-governmental organisations, journalists' associations, academic institutions and representatives of vulnerable groups. Representatives of the national authorities, national institutions and intergovernmental organisations have also participated. Presentations from key partners on problems identified in ECRI country reports are followed by

³⁹⁸ See section II A 2 for a detailed analysis of the "main messages" of ECRI country-by-country reports.

open and participative discussions. These sessions are also a useful occasion for ECRI to introduce new General Policy Recommendations and explore other thematic issues.

ECRI's first national Round Table was held in Romania in October 2002. The principal concerns and conclusions to be drawn from the report on ECRI's second report on Romania were set out by members of ECRI and this presentation was followed by a debate. An explanation of Romania's new law on the prevention and punishment of all forms of discrimination was provided by the Department of Interethnic Relations of the Ministry of Public Information, and the National Council for Combating Discrimination, a newly created specialised body to combat discrimination, outlined how its work contributed to the implementation of the new anti-discrimination law. Underlining the importance of dialogue between member States and those citizens affected by their decisions, an exchange of views took place with the National Office for Roma and the NGO Romani CRISS on the "Government Strategy for improving the situation of Roma". In view of ECRI's conviction about the important role of the media in disseminating accurate information about diversity and fighting racial hatred, the role of the media and examples of "best practices" were discussed with the Media Monitoring Agency and the Centre for Independent Journalism.

A further Round Table was held in Portugal in February 2003. Presentations by ECRI and its national partners on ECRI's second report on Portugal were followed by debate with representatives of governmental authorities and civil society, including victims of discrimination. ECRI argued that the application of the country's anti-discrimination laws often falls short of what is set out in law, leaving groups such as Roma and religious minorities with insufficient protection. The situation of Roma/Gypsies was examined in more depth, with particular reference to practical initiatives at the local level, including education for Roma children. The implementation of the National Plan for Immigration and the issue of co-operation between the authorities and the Portuguese Council for Refugees were debated with the Deputy High Commissioner for Immigrants and Ethnic Minorities and the president of the Portuguese Council for Refugees. Recent developments in anti-discrimination legislation and the work of the Commission for Equality and against Racial Discrimination were also discussed.

In June 2003, a Round Table was held in Vilnius, Lithuania with representatives of relevant governmental agencies and victims of discrimination. It concentrated on: ECRI's second report on Lithuania; challenges ahead in the field of asylum and immigration; national legislation to combat discrimination; and the situation of Roma/Gypsies in Lithuania.

ECRI's recent report on Lithuania highlights advances in combating racism and intolerance, including the adoption of a programme aimed at promoting the integration of members of the Roma/Gypsies communities into Lithuanian society and the granting of eligibility and voting rights in local elections to non-citizen permanent residents. ECRI drew attention to the continuing problems of racism faced by members of



ECRI's Round Table in Lithuania
on 12 June 2003

the Roma/Gypsy community, asylum-seekers and refugees, including Chechens and Afghans. Issues such as the protection afforded by existing legal provisions aimed at countering manifestations of racism and racial discrimination, including in the media, were also discussed.

The Round Table also paid special attention to the need to implement one of the central recommendations of its recent country report, namely the creation of a specialised body to combat racism and intolerance.

Following the publication of ECRI's second report on Slovenia, a Round Table was held in Ljubljana in October 2003, with the aim of finding ways to improve the implementation of existing initiatives and encouraging further reform. The session included contributions from the Chair of ECRI and the Human Rights Ombudsman of Slovenia. In addition to examining the recommendations set out in ECRI's report, the Round Table addressed issues related to ECRI's General Policy Recommendation No. 7 (on national legislation to combat racism and racial discrimination); the situation of minority groups in Slovenia; and the problems of racist and xenophobic public discourse. The meeting also discussed the establishment of a national specialised body to combat discrimination.

One of the main themes of the Round Table was the situation of ex-Yugoslav minority groups in Slovenia, which according to ECRI's second report on Slovenia encounter certain problems as regards access to citizenship and to social and economic rights. Representatives of all ex-Yugoslav minority groups were invited to the event and the presidents of their national cultural organisations used this occasion to make a joint declaration. This declaration urged the National Assembly of the Republic of Slovenia to initiate and propose an amendment to the Constitution of the Republic of Slovenia to nominally classify all ex-Yugoslav minority groups in the text of the constitution and determine them to be national communities/national minorities in the Republic

of Slovenia. The discussion on GPR 7 concluded that, despite positive individual measures, Slovenia still lacks a comprehensive body of anti-discrimination legislation. The Round Table also emphasised the important role of the media in portraying positive and accurate images of minority groups, in order to combat prejudice and racist public discourse.

b) Thematic meetings and consultations with non-governmental organisations

ECRI is committed to strengthening its co-operation with NG Os, including through the exchange of information, organising meetings and consultations, and developing its network of partner NG Os. In addition to meeting civil society organisations in the Round Tables organised in member States, ECRI maintains contacts with NG Os on a regular basis in the preparation of its country-by-country reports and during visits to countries. NG Os are a vital source of information about the situation of vulnerable groups and racist incidents, and they help to publicise ECRI's work. Grassroots NG Os are particularly useful in reaching marginalised or isolated groups and spreading the anti-racism message to all corners of society.

ECRI emphasises that its relationship with NG Os should be a genuine two-way exchange, in that such organisations can also play an important role in helping to establish priorities for the work of ECRI. To this end, a consultation meeting with international NG Os took place in Strasbourg in November 2002. The overall purpose of the meeting was to update NG Os about progress in ECRI's work, including the entry into force of the new ECRI Statute, the results of the second round of country-by-country work, and the beginning of the third round of country monitoring in 2003. The meeting also provided an opportunity for a comprehensive exchange of views about future co-operation between NG Os and ECRI, including on ECRI's communication strategy, Programme of Action with civil society and consultation with NG Os on issues to be pursued in work on general themes.

ECRI has also developed priorities with civil society organisations and other partners in the framework of thematic round table meetings. On the occasion of the International Day for the Elimination of Racial Discrimination in March 2002, ECRI organised a "dialogue against violence" in Strasbourg with leading NG Os and academic experts. Panel discussions on intercultural dialogue, extremist movements, and cultural diversity in the context of the universality of human rights were followed by open debates with invited members of civil society.

In March 2003, ECRI marked the International Day for the Elimination of Racial Discrimination by organising a joint Round Table with the European Union Monitoring Centre on Racism and Xenophobia (EUMC) on local solutions to combat racism. The meeting acknowledged that problems of racism are often best dealt with at grass roots level, i.e. as close as possible to the potential victims and perpetrators. The discussion

focussed on how national legislation can be implemented on the ground, the role of youth groups in combating racism, and mechanisms for community-based dialogue and conflict resolution.



ECRI/EUMC Joint Round Table
on 21 March 2003

c) Development of a communication strategy

The goal of ECRI's media strategy is to improve its communication with opinion-makers and the general public. ECRI has established a "think-tank" on its communication strategy, which has identified a number of central objectives, including enhancing participation in communication networks, developing exchanges of information, and involving partners as far as possible in ECRI's work. An important element of this strategy is identifying key communication partners. To be effective, communication with the media and civil society groups must be interactive. Therefore, in addition to national and international human rights NGOs, ECRI emphasises the importance of developing relationships with broader civil society including the media, universities, youth organisations, minority groups and religious communities. The exchange of information and dialogue with such groups should encourage a sense of commitment and ownership of the anti-racism message, and active participation in the work of ECRI.

In implementing this strategy, ECRI has aimed for a broad distribution of its country-by-country reports, General Policy Recommendations, and other publications. ECRI's work has been translated into as many of the national languages of the member States as possible. Key journalists and media outlets responsive to the message of ECRI have been identified, and a network of other civil society organisations has been developed at Round Table consultations in Strasbourg on thematic issues and briefing sessions in member States. The coherence of ECRI's message and accessibility of its materials has also been improved through the upgrading of its website. Progress has also been made in educational communication, including through a strengthened relationship with the Council of Europe Youth Section, developing educational materials and providing expert teaching for further education courses.

d) Website development

The imaginative use of the Internet is an essential component of any modern communication strategy. As a matter of general policy, ECRI has underlined that the Internet should be better exploited to diffuse anti-discrimination material. For its part, ECRI has further developed its own website: www.coe.int/ecri. The website is available in English and French, and contains all of ECRI's country reports and General Policy Recommendations, in addition to press releases, reports on Round Table meetings and annual reports. From the perspective of civil society organisations, an important feature of the website is the section on "educational resources" which makes available campaign materials, education packs and image resources, including the "all different-all equal" cartoon book and video clips from a Europe-wide anti-racism campaign. The site includes a series of interviews with leading figures in the fight against racism and links to other relevant organisations, including other bodies within the Council of Europe. The ECRI CD-Rom, containing much of the information available on the website on a single disk, has become a useful addition to many human rights libraries throughout Europe.

e) Activities targeted at the political bodies of the Council of Europe

As the Secretary General of the Council of Europe has made clear, the fight against racism, racial discrimination, xenophobia and related intolerance is "one of the primary *raison d'être*" of the Organisation.³⁹⁹ ECRI has made continuing efforts to inform the political bodies of the Council of Europe about its activities and recommendations. It lays particular emphasis upon effective communication with the Organisation's Committee of Ministers and Parliamentary Assembly. ECRI also co-operates on a regular basis with the Council of Europe's Commissioner for Human Rights, the Advisory Committee of the Framework Convention for the Protection of National Minorities, and the Group of Specialists on Roma/Gypsies (MG-S-ROM).

Such interchange is required not only to promote an active flow of information, but also to ensure complementarity with the political activities of these bodies, and to maintain a coherent overall approach within the Council of Europe to the issue of combating racism.

f) Contacts with the youth sector

Young people are often the most receptive to anti-racism messages. Misconceptions about diversity, if corrected at an early age, may not develop into hardened prejudices. Young people feature amongst the most vulnerable members of groups affected by racism and intolerance, and an understanding of their experience is essential in order to develop strategies aimed at improving the situation of such groups. ECRI has supported a number of youth campaigns against racism and provided educational materials to youth groups. Messages conveyed through entertaining campaigning

³⁹⁹ Address by the Secretary General of the Council of Europe, Walter Schwimmer to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban, South Africa, September 2001.

material for younger children, such as cartoon books, which explain basic ideas about diversity and tolerance, can leave a lasting impression on growing minds.

Furthermore, ECRI devoted one of three working groups in its March 2003 joint Round Table with the European Union Monitoring Centre on Racism and Xenophobia (EUMC) to a discussion of the important role of youth in the fight against racism. The meeting, addressed by a representative of the European Youth Forum, underlined that value systems are significantly shaped in youth and childhood, and that the active involvement of young people and youth NGOs is crucial for building respect for diversity in local communities. In June 2002, the European Youth Centre in Strasbourg hosted a meeting between members of ECRI and representatives of the Youth Sector of the Council of Europe to discuss developing co-operation and possible future joint action in this field.

III ASSESSMENT OF THE IMPACT OF ECRI'S SUBSTANTIVE WORK

A. INTRODUCTION

The principal aim of all of ECRI's substantive work is to impact upon the problem of racism and intolerance in Council of Europe member States. Consequently, any review of ECRI's work over the last four years would be incomplete without some assessment of the extent to which it has achieved this aim.

It should be noted at the outset that, given the nature of ECRI's activities, attempting to measure its impact is a far from straightforward task. To take just one example, an increase in the number of violent crimes recorded as having a racist dimension could reflect an increased awareness of racism on the part of law enforcement officials, rather than an upsurge in the actual number of racist attacks. Moreover, establishing a direct causal connection between societal change and ECRI's work is an exercise which is fraught with difficulty. Even in apparently clear cut cases, where a State acknowledges that a particular measure has been introduced in response to one of ECRI's recommendations, the change concerned may also be the product of a variety of internal and external political pressures; attributing it to ECRI may be merely politically expedient. Conversely, there may well be situations where action by ECRI has directly driven change, but it is politically convenient for credit to be given to a national body, or to a particular minister. Given that this is true in respect of the targeted recommendations to be found in ECRI's country-by-country reports, it is evident that there will be even more imponderables where ECRI's work is seeking more generalised outcomes such as a "change in the climate of opinion" amongst the general public.

One approach to assessing impact where a direct causal connection is difficult to establish is to use "indicators": quantitative indicators can be useful in establishing the raw output of an activity, for example, "50 NGOs participated in an ECRI Round Table discussion"; qualitative indicators are required to gauge the impact on those who took part. Ideally, such indicators should be participative in nature, measuring the knowledge and opinions of key stakeholders through participant surveys, which examine the extent to which the target audience has been influenced by the work of an organisation and their opinions about how such work may have helped to achieve change.

This impact assessment of ECRI's work is based upon a detailed questionnaire, which was sent to key non-governmental organisations, national human rights and anti-racism institutions and national authorities. The questionnaires invited respondents to assess the impact of ECRI's country-by-country activities (including the recommendations made in its second round of country reports); its work on general themes (including

General Policy Recommendations⁴⁰⁰ and compilations of “good practices”); and its relations with civil society. Participants were asked to comment on their familiarity with ECRI’s work and for their views about the extent to which it has contributed to improvements in policy and implementation. They were also asked to provide detailed answers regarding the various ways in which they may have used ECRI’s work.

Three “target” countries were suggested by ECRI: Ireland, Latvia and Romania. These Council of Europe member States were selected because they are diverse in terms of economic development, human rights infrastructure, and as regards the issues which ECRI has identified during its visits.

Geographically at the edge of Europe, **Ireland** was a founder member State of the Council of Europe in 1949, and has been a member State of the European Union since 1973. Until recently, it has been a relatively homogeneous society, with low levels of immigration and a proportionally small number of non-Irish citizens. Although members of the Irish Traveller Community have long experienced discrimination, problems of racism and intolerance against persons of non-Irish origin represent new challenges for this long-standing member State of the Council of Europe.

Latvia, which joined the Council of Europe in 1995, is part of the ‘first wave’ of EU accession countries scheduled for membership in 2004. With a population which includes a sizeable Russian speaking community, the transition to democracy has required it to confront a variety of difficult issues in the field of racism and intolerance, especially as regards linguistic and citizenship questions.

A Council of Europe member State since 1993, **Romania** is currently an applicant country to join the EU. It has a significant population of Roma/Gypsies, a community identified by ECRI as particularly vulnerable to racism. Recent developments in Romania of particular interest to ECRI include the establishment of a number of bodies with mandates to combat racism and intolerance.

ECRI’s work in these three, distinctly different, Council of Europe States has been tailored to the specific problems which it has identified in its first and second round reports. Consequently – in co-operation with ECRI – country-specific questions were included in the questionnaires. Subject to the general caveats set out above, the responses to the survey included sufficient detail to enable a qualitative assessment to be made of the impact of ECRI’s activities in these countries. The synthesis which follows indicates both the scale of impact reported by respondents and summarises their substantive comments and suggestions regarding ECRI’s country-by-country activities, work on general themes, and relations with civil society.

400 The questionnaire did not cover GPR 7 because its adoption by ECRI was too recent to assess its impact.

B. COUNTRY-BY-COUNTRY WORK

1. International legal instruments

ECRI encourages all member States to ratify the full complement of international instruments concerning racism and intolerance, and to refrain from lodging any reservations to the provisions of such instruments.⁴⁰¹

If ECRI identifies significant ratification “gaps” in a given State, its visit report will recommend that the “missing” instruments be ratified by the State concerned. It is particularly attentive to the issue of whether or not a State has ratified certain key anti-racism instruments, including the European Convention on Human Rights and Fundamental Freedoms and its Protocols; the Council of Europe Framework Convention for the Protection of National Minorities; the European Charter for Regional or Minority Languages and the International Convention on the Elimination of All Forms of Racial Discrimination.

In order to assess the impact of such recommendations, the survey questionnaire invited respondents to indicate whether, in their view, ECRI’s country-specific recommendations had positively influenced the ratification of the instruments concerned. The responses received indicate that the success which ECRI has enjoyed in this area varies from country to country.

In respect of **Ireland**, ECRI’s second report on this country recommended the ratification of a range of instruments including Protocol No. 12 to the European Convention on Human Rights; the European Convention for the Participation of Foreigners in Public Life at Local Level; the European Convention on Nationality; the European Charter for Regional or Minority Languages; the UNESCO Convention against Discrimination in Education and the European Convention on the Status of Migrant Workers.⁴⁰²

Additional ratifications recommended in ECRI’s second report on **Latvia** included the Framework Convention for the Protection of National Minorities, the European Charter for Regional or Minority Languages; the Revised European Social Charter; the European Convention on the Legal Status of Migrant Workers; and the European Convention for the Participation of Foreigners in Public Life at Local Level.⁴⁰³

Respondents from both of these countries indicated that they considered that the impact of ECRI’s work in this area had been, at best, marginal. Several non-governmental respondents from Ireland suggested that the main impact of ECRI’s recommendations had been to provide extra material with which to “put pressure” on the government and/or to highlight ongoing deficiencies in the State’s ratification record. No respondents from either country considered that ECRI’s recommendations had directly impacted upon the ratification of the instruments concerned.

401 For a full description of the standards which ECRI applies in this area, see section II, A, 2 a) (above).

402 For further details, see paragraphs 1 to 5 of ECRI’s second report on Ireland.

403 For further details, see paragraphs 1 to 7 of ECRI’s second report on Latvia.

ECRI's second report on **Romania** also contains a long list of instruments which ECRI recommends should be ratified by the Romania.⁴⁰⁴

In contrast to the responses received from Ireland and Latvia, a majority of respondents from Romania indicated that they considered that ECRI's recommendations had positively influenced the ratification by Romania of the instruments concerned.

Among the specific measures cited by respondents, and directly attributed to ECRI's work, are: the adoption of a declaration recognising the competence of the United Nations Committee for the Elimination of Racial Discrimination under Article 14 of the International Convention for the Elimination of All Forms of Racial Discrimination; and the ratification of the European Convention on Nationality.

2. Constitutional and other basic provisions

ECRI evaluates the extent to which constitutional and other basic provisions in the States which it visits adequately prohibit discrimination, promote integration and protect vulnerable groups.⁴⁰⁵ Where it identifies gaps in legal protection and/or a failure to implement existing provisions, ECRI addresses country-specific recommendations to the State concerned.

In respect of **Ireland**, ECRI recommendations have *inter alia* highlighted the need for constitutional protection to be expressly extended to non-citizens.⁴⁰⁶ A number of responses received from Ireland indicated that ECRI's work had helped to facilitate discussions on this issue by non-governmental organisations. However, there is no indication that ECRI recommendations have led to any substantive strengthening of constitutional guarantees offered to non-citizens.

In **Latvia**, ECRI's recommendations have highlighted the need for changes in legislation concerning citizenship, languages and elections.⁴⁰⁷ Most responses received from Latvia suggested that ECRI's work has had a discernable impact in this area; one respondent suggested that, considered in conjunction with work by other international organisations, ECRI's recommendations have played a "crucial role" in encouraging the adoption of measures to increase the take-up of Latvian citizenship through naturalisation. However, some responses suggested that considerable progress remains to be made in the implementation of certain other ECRI recommendations (including as regards reviews of the State Language Law and the Administrative Violations Code, and the implementation of measures designed to increase the participation of non-ethnic Latvians in public life).

404 These include: Protocol No. 12 to the European Convention on Human Rights; the European Charter for Regional or Minority Languages; the European Convention on Nationality; the European Convention on the Legal Status of Migrant Workers and the European Convention on the Participation of Foreigners in Public Life at Local Level. For further details, see paragraph 1 of ECRI's second report on Romania.

405 For a full description of the standards which ECRI applies in this area, see section II, A, 2 b) (above).

406 See paragraph 7 of ECRI's second report on Ireland.

407 See paragraphs 11 to 21 of ECRI's second report on Latvia.

Measures recommended by ECRI in relation to **Romania** have included the widening of constitutional guarantees of equality and non-discrimination to explicitly cover non-citizens, and the implementation of legislation to prohibit political parties from engaging in incitement to hatred or discrimination.⁴⁰⁸ Participants in the survey were invited to indicate whether they considered that these country-specific recommendations had made an impact. Respondents indicated that ECRI's recommendations had contributed to a debate on constitutional change and to the adoption of enhanced constitutional guarantees in Romania.

Specific improvements cited as having been positively influenced by ECRI's recommendations include a number of Government ordinances and laws, for example, concerning the prevention and punishment of discrimination, the prohibition of racist organisations, the reintegration of offenders, and gender equality.

3. Criminal law

ECRI monitors the operation of the criminal law in member States, and has drawn up standards concerning the substantive content of legal provisions in this area. It also examines the implementation in practice of criminal law provisions, the role of prosecution authorities, law enforcement agencies and third parties, training, awareness raising and data collection.⁴⁰⁹ In its country-specific visit reports, ECRI uses these general standards to assess the extent to which the criminal law is playing an appropriate role in combating racism and intolerance.

In its second report on Ireland, Latvia and Romania, ECRI emphasised that the criminal law should include adequate incitement to hatred legislation, define common offences of a racist or xenophobic nature as specific offences and consider racist motivation as an aggravating circumstance when sentencing.

In **Ireland**, an official review of the Prohibition of Incitement to Hatred Act 1989 was taking place at the time of the survey, and respondents were asked whether issues raised by ECRI were being addressed by the review. If so, they were invited to comment upon whether ECRI's recommendations had impacted upon the discourse surrounding the review of the Act. A number of responses indicated that the review did encompass areas of concern to ECRI, and that ECRI's recommendations had impacted upon the review process. However, as one respondent made clear, the outcome of the review remains difficult to predict, in part because of the possible impact of parallel political discussions taking place within the European Union.

In respect of both **Latvia** and **Romania**, respondents were asked whether ECRI's specific recommendations concerning the definition of offences and sentencing had impacted upon the consideration of these issues by the relevant authorities.

⁴⁰⁸ See paragraphs 3 and 6 of ECRI's second report on Romania.

⁴⁰⁹ For a full description of the standards which ECRI applies in this area, see section II, A, 2 c) (above).

Responses received from Latvia unanimously indicated that ECRI's recommendations have yet to be taken on board by the Latvian authorities. However, it appears that more positive steps have been taken in Romania, with all but one respondent indicating that ECRI's recommendations have impacted on the extent to which the Romanian authorities have given consideration to the definition of offences and sentencing practice in this area.

4. Civil and administrative law

Reference has already been made to ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, in which ECRI encourages all member States to adopt and maintain a comprehensive body of anti-discrimination legislation prohibiting discrimination in all fields of life.⁴¹⁰ In its second round reports, ECRI set a number of standards which should inform the elaboration and maintenance of anti-discrimination legislation in member States. These cover substantive legal provisions, implementation, awareness raising and data collection. As regards, more particularly, the substantive content of civil and administrative law, ECRI considers that it should consist of a comprehensive body of legislation prohibiting discrimination in all fields of life, including education, housing, access to public and social services.⁴¹¹

The visits to Ireland, Latvia and Romania enabled ECRI to produce a "snapshot" of relevant civil and administrative law provisions in each of those countries. On the basis of ECRI's findings-in-fact during those visits, country-specific questions regarding ECRI's impact on the development of civil and administrative law were included in the questionnaires.

In **Ireland**, the focus was placed upon the introduction of new anti-discrimination legislation (notably, the Employment Equality Act 1998 and the Equal Status Act 2002), and respondents were asked to qualify the impact of ECRI's work on the elaboration and development of that legislation. While all respondents indicated that ECRI's work had had some impact upon the development of this legislation, none considered that it had been of more than "informative" importance, and a number suggested that its impact had been only "marginal".

The version of the survey sent to respondents in **Latvia** highlighted ECRI's recommendation that the Latvian authorities adopt a comprehensive body of anti-discrimination legislation, which also provides for effective mechanisms of enforcement and redress. Responses suggest that ECRI's recommendations have made a positive contribution to discussions concerning the adoption of such legislation. Non-governmental respondents indicated that such debate tends to be initiated by the non-governmental or inter-governmental sectors, rather than the national authorities. However, they also suggested that, as a result of ECRI's work, the attitude of the national authorities is

⁴¹⁰ See Section II B 2 (g).

⁴¹¹ For a full description of the standards which ECRI applies in this area, see section II, A, 2 d) (above).

slowly changing, and that the issues raised by ECRI are being accorded greater prominence in public discourse. In this connection, one respondent specifically highlighted ECRI's impact upon the adoption in 2002 of an employment law containing "a number of articles prohibiting discrimination in employment" which, in the respondent's view, has "influence[d] the situation by providing the instruments for legal appeal against discrimination in employment".

As regards **Romania**, the questionnaire focused upon modifications which ECRI has suggested ought to be made to two recent laws. A new law on local public administration and local autonomy foresees special measures to protect the rights of persons belonging to national minorities at the local level. However, it only applies to minority groups which comprise 20% of the population of any given locality.

In its second report, ECRI pointed out that the dispersed nature of certain minority groups in Romania may mean that these new provisions do not always have their intended impact, and suggested that these arrangements be reviewed.

ECRI has also scrutinised the law which applies to local elections, which has been amended to include a 5% threshold for the election of candidates. The results of local elections held in 2000 suggested that this amendment had served to reduce minority group representation in political life at local level. Consequently, in its second report, ECRI recommended that the 5% threshold be reviewed.

The questionnaire invited respondents to indicate whether these two proposals have been taken into consideration by the Romanian authorities. Although a few responses suggested that ECRI's proposals had been discussed, respondents indicated that both the 20% threshold in the law on local public administration and local autonomy, and the 5% threshold in the law governing local elections remain firmly in place.

5. Specialised bodies and other institutions

ECRI's General Policy Recommendation No. 2 encourages States to establish specialised bodies and other institutions to combat racism and discrimination.⁴¹² In its country-by-country reports, ECRI has complemented the broad recommendations set out in GPR No. 2 with a number of operational standards regarding the composition, mandate and powers, independence and impartiality, and role of such bodies.⁴¹³

ECRI's second report on **Ireland** acknowledges the existence of a number of such specialised bodies and institutions,⁴¹⁴ representatives of which were included amongst the persons to whom questionnaires were sent. Respondents from Ireland were asked to indicate which, if any, of ECRI's main activities had proved to be of assistance to such bodies. Responses received from representatives of two of the main specialised bodies indicated that *all* of ECRI's activities – provision of reference material, hosting thematic meetings, visits to Ireland and production of reports, promulgation of General Policy

⁴¹² See Section II B 2 (b).

⁴¹³ For a full description of the standards which ECRI applies in this area, see section II, A, 2 f) (above).

⁴¹⁴ See paragraphs 21 to 27 of ECRI's second report on Ireland.

Recommendations and publication of examples of “good practice” – had been of assistance to them in their work. Amongst respondents from other sectors who chose to engage with this question, the ECRI activities most prevalently selected as potentially beneficial to specialised bodies were the provision of reference material and visits to Ireland and the production of reports.

Although there is an independent National Human Rights Office (NHRO) in **Latvia**, there is no specialised body with specific responsibility in the field of combating racism and intolerance.⁴¹⁵ Survey respondents were asked to qualify the impact of ECRI's suggestions that the Latvian authorities address this issue, either by creating such a specialised body, or by allocating additional funds to enable the NHRO to establish a section dedicated to this area. The responses received suggest that ECRI's impact has been, at best, “informative”, and a number of respondents suggested that ECRI has yet to make any impact on efforts to strengthen institutional arrangements to combat racism and intolerance in Latvia.

In its second report on **Romania**, ECRI focussed *inter alia* on the proposed creation of a National Council to Combat Discrimination. It emphasised that, ideally, the composition and mandate of this new specialised body should be developed along the lines set out in its General Policy Recommendation No 2.⁴¹⁶ Survey respondents were asked to reflect upon the impact which ECRI's views may have had on the subsequent decisions regarding the National Council. A majority of respondents, including those from the governmental sector, indicated that ECRI's views had played either a “persuasive” or “determining” role in finalising the composition and mandate of this new body.

6. Education

ECRI considers that it is incumbent upon member States to make provision for mandatory human rights and diversity education in schools. This implies *inter alia* that human rights education should be taught as a compulsory subject in teacher training institutions.⁴¹⁷

In its second report on **Ireland**, ECRI welcomed new initiatives undertaken to introduce human rights education into schools at primary and secondary level.⁴¹⁸ Respondents were asked to qualify the extent of the impact of ECRI's work on the development of these initiatives. A majority of respondents from Ireland considered that the impact of ECRI's work in this area had been “informative”, with one respondent specifying that this had been especially true in the vocational education sector.

As regards **Latvia**, ECRI's report on this country recommended the extension of compulsory human rights education to secondary schools, and called on the Latvian authorities to ensure that relevant text books are available for Russian speaking students and teachers. ECRI also highlighted the need for balanced history text books in

⁴¹⁵ See paragraphs 29 and 30 of ECRI's second report on Latvia.

⁴¹⁶ See paragraph 21 of ECRI's second report on Romania.

⁴¹⁷ For a full description of the standards which ECRI applies in this area, see section II, A, 2 g) (above).

⁴¹⁸ See paragraph 28 of ECRI's second report on Ireland.

schools.⁴¹⁹ The questionnaire sent to Latvia invited respondents to indicate the degree of impact which these proposals have had on the development and delivery of human rights education in schools. A majority of respondents indicated that the impact of these proposals had been no more than "marginal".

ECRI's findings during its visit to **Romania** led it to recommend the use of more interactive and participative methods of delivering human rights education to school children. It also recommended that the diverse nature of Romanian society and the contribution of minority groups be reflected in the teaching of Romanian history.⁴²⁰ Respondents' views were sought on the impact of these recommendations on the development and delivery of human rights education in schools. Although some considered that ECRI's recommendations had been "informative", half of all respondents characterised their impact as either "marginal" or of no impact.

7. Reception and status of non-citizens

ECRI considers that legislation, policy and practice relating to immigration, asylum and the status of non-citizens must make an effective contribution to the prohibition of discrimination and the promotion of societal integration.⁴²¹

A substantial portion of ECRI's second report on **Ireland** was devoted to the issue of the reception and status on non-citizens.⁴²² Survey respondents were asked if they considered that highlighting this issue had assisted ongoing efforts at national level to address concerns regarding the reception and status of non-citizens. More specifically, they were asked to indicate what impact, if any, ECRI's work may have had as regards the enhancement of protection of the rights of non-citizens with reference to five main areas identified in ECRI's report, namely: immigration, refugees and asylum seekers, processing of asylum applications, accommodation and provision for asylum seekers and integration strategies.

All respondents indicated that ECRI's highlighting of the issue of the reception and status of non-nationals had been of assistance at national level. As regards the five specific areas in respect of which their views were sought, a majority of respondents considered that ECRI's work had been "informative" as regards the issues of immigration, refugees and asylum seekers, processing of asylum applications, and accommodation and provision for asylum seekers. Asked to qualify the impact of ECRI's contribution as regards improving integration strategies, a majority of respondents expressed the view that this had been of "marginal" or "no" relevance.

In its second report on **Latvia**, ECRI recommended the extension of eligibility and voting rights in local elections to resident non-citizens, and the removal of any remaining unjustified legal provisions which restrict non-citizens' property, employment and economic and social rights.⁴²³ Respondents were asked to describe the impact of these

419 See paragraphs 31 and 32 of ECRI's second report on Latvia.

420 See paragraph 27 of ECRI's second report on Romania.

421 For a full description of the standards which ECRI applies in this area, see section II, A, 2 i) (above).

422 See paragraphs 29 to 42 of ECRI's second report on Ireland.

423 See paragraph 34 of ECRI's second report on Latvia.

recommendations upon efforts to ensure equal protection of the rights of non-citizens. Most responses suggested that these recommendations had not been taken into account by the Latvian authorities.

In respect of asylum seekers and refugees, at the time of the publication of ECRI's second report on Latvia, a new draft asylum law was pending before parliament. ECRI expressed concern that the law might not provide adequate protection against non-refoulement and that safeguards concerning the use of detention had not been introduced.⁴²⁴ The questionnaire queried whether the concerns raised by ECRI had been taken into consideration during the adoption of the new asylum law. Here again, a rather negative response was received, with only one respondent indicating that ECRI's concerns had been taken into consideration.

ECRI has also stressed that officials involved in the asylum application process in **Romania** should receive on-going human rights training.⁴²⁵ Respondents were asked whether ECRI's view had been taken into consideration in the context of the development of the legal and administrative framework for dealing with refugees and asylum seekers. Positive, and highly-specific responses were received, which directly stated that there had been a connection between ECRI's report and the organisation of training courses for officials involved in the asylum process. Concrete examples of courses which had been provided for such officials were cited by respondents from both the non-governmental and governmental sectors.

8. Access to education

ECRI has stressed that States should ensure that adequate provision is made for the education of members of minority groups. Legislation, policy and practice in this field should be kept under review in order to ensure that the standard of education delivered to minority groups is equivalent in practice to that delivered to members of the majority population. More particularly, safeguards should be put in place to combat discrimination in schools and positive measures should be taken to promote the integration of students from minority backgrounds.⁴²⁶

In its second report on **Ireland**, ECRI encouraged the Irish authorities to consider ways of developing the provision of mother tongue teaching for children from minority groups. In order to address the needs of students of minority faiths, it also suggested that consideration should be given to providing alternative religious education or religious education which embraces all faiths.⁴²⁷ Respondents in Ireland were asked to indicate whether they considered that the authorities had responded positively to these suggestions. While a majority of respondents suggested that there had been a positive response with regard to the provision of mother tongue teaching for students from minority groups, this was not the case in respect of measures to address the needs of

⁴²⁴ See paragraph 37 of ECRI's second report on Latvia.

⁴²⁵ See paragraph 30 of ECRI's second report on Romania.

⁴²⁶ For a full description of the standards which ECRI applies in this area, see section II, A, 2 j) vii (above).

⁴²⁷ See paragraphs 44 and 46 of ECRI's second report on Ireland.

students of minority faiths. According to respondents, the "main Christian churches" retain firm control of the majority of the primary and secondary education which is delivered in Ireland.

ECRI has addressed a number of proposals to the authorities in **Latvia** concerning the transition to bilingual and Latvian language only instruction in schools.⁴²⁸ Respondents were asked whether these recommendations have assisted efforts to ensure a smooth and equitable transition to bilingual/Latvian only instruction. Most responses suggested that this was not the case; one non-governmental respondent ventured the view that any shifts in attitudes regarding the transition to bilingual and Latvian only instruction were "less connected to the ECRI report" than to "everyday reality in society".

As regards **Romania**, ECRI's second report suggested that further measures are needed to ensure that all minority groups can avail of education in their mother tongue and to prevent discrimination against Roma/Gypsy children in the classroom.⁴²⁹ The questionnaire sent to respondents in Romania invited them to consider whether these suggestions have led to any additional measures being taken to prevent discrimination in the classroom. The majority of respondents considered that this was the case, a governmental source making specific reference to the adoption of a series of recent ordinances and laws which penalise discrimination in the context of access to education, and seek to encourage respect for the traditions of national minorities.

9. Employment

ECRI closely scrutinises the employment situation in member States, with a view to assessing whether adequate measures are being taken to prevent discrimination in the workplace and to facilitate equal access to employment.⁴³⁰

ECRI's second report on **Ireland** advocated the introduction of a wider range of work permit types and greater possibilities for family reunification.⁴³¹ Respondents were asked for their views on the contribution, which these proposals may have made to the ongoing debate concerning the nature of work permits issued to non citizens. The majority of responses characterized ECRI's contribution to this debate as either "informative" or "persuasive".

As regards the employment situation in **Latvia**, ECRI has called on the authorities to ensure that the requirement of proficiency in the Latvian language can only be insisted upon in cases where there is a "legitimate public interest".⁴³² The questionnaire queried whether this has helped to ensure that the "legitimate public interest" principle is strictly applied in practice. Most respondents considered that this was not the case.

ECRI has also called on the Latvian authorities to conduct research aimed at identifying the ethnicity of the unemployed and to monitor the application of the new labour law

428 See paragraphs 41 to 47 of ECRI's second report on Latvia.

429 See paragraphs 32 to 35 of ECRI's second report on Romania.

430 For a full description of the standards which ECRI applies in this area, see section II, A, 2 k) (above).

431 See paragraph 50 of ECRI's second report on Ireland.

432 See paragraph 48 of ECRI's second report on Latvia.

adopted in June 2001.⁴³³ Respondents were asked for their views as to whether the relevant authorities have responded positively to ECRI's desideratum. Again, most responses received suggested there had been no such positive response.

In its second report on **Romania**, ECRI expressed concern at the publication in national newspapers of job advertisements specifying that Roma/Gypsies "need not apply".⁴³⁴ The survey invited respondents to indicate whether they considered that highlighting this issue had contributed to efforts to tackle employment-related discrimination. The majority of responses suggested that this was not the case. Nevertheless, one governmental respondent indicated that the National Council to Combat Discrimination has recently issued an instruction providing for the application of sanctions in cases where employment advertisements include discriminatory content.

10. Vulnerable groups

ECRI has emphasised that positive measures should be taken to prevent discrimination against vulnerable groups and to foster active involvement in public life by members of such groups. In its country-by-country work, it has recommended that national authorities step up their efforts to improve the situation of members of vulnerable groups including the Roma/Gypsy community, linguistic minorities, the Muslim community, the Traveller community, indigenous peoples, formerly deported populations and refugees.⁴³⁵

Groups identified as vulnerable by ECRI in its second report on **Ireland** included the Traveller community, the Muslim community and members of visible minority groups.⁴³⁶ Respondents were asked to specify which, if any, of ECRI's activities they considered had contributed to efforts to ameliorate the situation of member of such groups. A majority of the responses received identified visits to Ireland, the production of General Policy Recommendations and the provision of basic reference material as being of most assistance in this area.

In its second report on **Latvia**, ECRI indicated that it considered Latvia's Russian-speaking population and its Roma/Gypsy community to be vulnerable groups.⁴³⁷ The questionnaire asked respondents whether they considered that the fact that ECRI had highlighted these groups had facilitated efforts to improve the situation of members of these groups. A majority of respondents considered that this was not the case. One non-governmental respondent who answered this question in the affirmative, qualified this by adding that this was true "only in respect of Roma, and to a very limited extent".

In **Romania**, ECRI also considered that the Roma/Gypsy community could be categorised as a vulnerable group. In its second report on that country, ECRI recommended that the Romanian authorities step up efforts to regularise the situation of members of

⁴³³ See paragraphs 50 and 51 of ECRI's second report on Latvia.

⁴³⁴ See paragraph 36 of ECRI's second report on Romania.

⁴³⁵ For a full description of the standards which ECRI applies in this area, see section II, A, 2 p) i) (above).

⁴³⁶ See paragraphs 53 to 55 and 64 to 76 of ECRI's second report on Ireland.

⁴³⁷ See paragraphs 53 to 55 and 66 to 76 of ECRI's second report on Latvia.

that community who do not have identity documents.⁴³⁸ Respondents were asked what impact this has had on efforts to ameliorate the situation of the Roma/Gypsy community. The response to this question was overwhelmingly positive; all respondents considered that ECRI's intervention had been influential, characterising it as having exercised an "informative", "persuasive" or (in one case) "determining" influence over developments in this area.

11. Monitoring

ECRI encourages member States to monitor the situation of vulnerable groups and to review the effectiveness of measures aimed at combating racism and direct and indirect discrimination. It has set out a number of standards for effective monitoring, including as regards the collection of baseline data, conducting national surveys, and the "proofing" and implementation of proposed legislation.⁴³⁹

Having regard to its findings in its second report on **Ireland**, ECRI encouraged the Irish authorities to establish a reliable and extensive system of data collection concerning the situation of minority groups and the recording of incidents of racist and discriminatory acts.⁴⁴⁰ Survey respondents were asked to characterise the contribution which they consider ECRI to have made in this area. A majority of respondents qualified the impact of ECRI's work in this area as, at best, "informative".

ECRI has also encouraged the authorities in **Latvia** to set up a system of data collection and monitoring in order to identify and remedy instances of discrimination.⁴⁴¹ The questionnaire invited to comment on the nature of the contribution that ECRI has made to the development of monitoring activities in Latvia. Respondents divided evenly between those who considered that ECRI's work had been "informative", and those who considered that it had not impacted upon monitoring work in Latvia.

In its second report on **Romania**, ECRI encouraged the Romanian authorities to take steps to ensure that a future census accurately records the number of Roma/Gypsies living in Romania. ECRI also expressed the view that steps ought be taken to ensure that data concerning the ethnic origin of suspects is not released by the police to the press.⁴⁴² Respondents were requested to assess the impact of these interventions. A slim majority of respondents qualified the impact of ECRI's work as "persuasive" or "determining"; however, almost as many responses suggested that it had had little or no impact.

12. Conduct of law enforcement officials

The conduct of law enforcement officials is another matter which is closely monitored by ECRI, especially as regards the quality of interactions between such officials and

438 See paragraphs 39 to 42 of ECRI's second report on Romania.

439 For a full description of the standards which ECRI applies in this area, see section II, A, 2 m)(above).

440 See paragraphs 60 and 61 of ECRI's second report on Ireland.

441 See paragraph 57 of ECRI's second report on Latvia.

442 See paragraphs 43 and 44 of ECRI's second report on Romania.

members of minority groups. In its country-by-country work, ECRI has set out a number of common standards designed to prevent discriminatory treatment and to prepare law enforcement officials for the difficult task of policing multi-cultural societies. Particular emphasis is placed, in this connection, upon the need for law enforcement officials to be adequately trained. Moreover, in accordance with its General Policy Recommendation (GPR) No. 1 on combating racism, xenophobia and antisemitism,⁴⁴³ in states where existing accountability mechanisms are found to be deficient, ECRI recommends the establishment and maintenance of independent mechanisms to consider complaints against law enforcement officials.⁴⁴⁴

ECRI has called for the establishment of an independent police complaints mechanism in **Ireland**. It has also highlighted the need for specific training for police officers working in the area of immigration, race-relations training for all law enforcement officers and the promotion of recruitment police officers from minority groups.⁴⁴⁵ Survey respondents were asked if they considered that ECRI's advocacy for these measures had contributed to the domestic debate concerning accountability and police training. Most respondents expressed the view that ECRI's work had made a contribution in this area.

Latvia is another country in which ECRI has recommended that an independent police complaints mechanism be established. It has also recommended that training designed to promote awareness of discrimination be provided to Latvian law enforcement officials.⁴⁴⁶ The questionnaire invited to comment on whether or not ECRI's work has made a contribution towards the introduction of such measures. By a small majority, respondents suggested that ECRI's recommendations have had no appreciable impact in this area.

ECRI has expressed concern regarding police attitudes and behaviour towards members of the Roma/Gypsy community in **Romania**. Here again, it has advocated the setting up of an independent mechanism to examine complaints against the police.⁴⁴⁷ Respondents were asked whether they considered that ECRI's work has contributed to efforts to hold law enforcement officials accountable for their actions. Again by a small majority, respondents indicated that they considered that ECRI's proposal had yet to impact upon current accountability arrangements.

13. Media

The media can play a central role in portraying a balanced and accurate picture of the situation of minority groups and non-citizens. ECRI *inter alia* encourages States to ensure that adequate legislation is in place to prohibit discriminatory reporting or incitement to hatred, and emphasises that the media itself has a responsibility to ensure the accuracy of its output through self regulation.⁴⁴⁸

443 Regarding the precise content of GRP 1, see section II B 2 a).

444 For a full description of the standards which ECRI applies in this area, see section II, A, 2 n)(above).

445 See paragraphs 57 to 59 of ECRI's second report on Ireland.

446 See paragraphs 58 and 59 of ECRI's second report on Latvia.

447 See paragraphs 45 to 47 of ECRI's second report on Romania.

448 For a full description of the standards which ECRI applies in this area, see section II, A, 2 o)(above).

ECRI's second report on **Ireland** highlighted the airing of prejudices and racist views on radio phone-in programmes.⁴⁴⁹ Participants in the impact survey were asked whether they considered that this had served to heighten demands for effective self-regulation by the media in Ireland. Most respondents indicated that, in their view, this was not the case.

As regards **Latvia**, ECRI has expressed concern at apparent differences between reporting on general issues in the Latvian-language and Russian-language media.⁴⁵⁰ Respondents were asked whether they considered that highlighting this issue has had an effect, in particular, on efforts to enhance mutual integration of all groups in Latvia. Again, most respondents indicated that they considered that ECRI's advocacy on this issue had yet to make an impact.

Instances of un-balanced reporting concerning minority groups by the media were also highlighted in ECRI's second report on **Romania**.⁴⁵¹ The questionnaire asked respondents whether they considered that highlighting this issue has had an effect, in particular, on calls for the media to apply codes of self-regulation. Half of all respondents considered highlighting this issue had made an impact. Of those who made this positive assertion, a number made specific reference to recent decisions by the National Audiovisual Council, which they considered provided evidence of reinforced regulation of the media in Romania.

449 See paragraph 63 of ECRI's second report on Ireland.

450 See paragraph 60 to 63 of ECRI's second report on Latvia.

451 See paragraph 49 of ECRI's second report on Romania.

C. WORK ON GENERAL THEMES

1. General Policy Recommendations

ECRI's General Policy Recommendations (GPRs) constitute a cornerstone of its work on general themes.⁴⁵² Respondents in Ireland, Latvia and Romania were asked whether they were familiar with GPRs 1 to 6 and, if so, whether those recommendations had been of use to them in their work.⁴⁵³

General Policy Recommendation No. 1 (GPR 1) on combating racism, xenophobia, antisemitism was adopted by ECRI on 4 October 1996. It sets out concrete proposals as regards the policy approach which States should adopt in respect of legal measures, education, training and research, the behaviour of police officers and other public officials, and access to public services and employment.⁴⁵⁴

A majority of respondents from all three States surveyed indicated that they were familiar with GPR 1, and that it had been useful to them in their work. Amongst the concrete examples given by respondents of the use to which they had put GPR1 were:

Ireland

contributing to discussions within the Department of Education, and shaping views on the development of policy at European and domestic level;

Latvia

lobbying the Government to ratify the Framework Convention on National Minorities, and encouraging public officials to promote tolerance in their public comments and to recruit minorities into the public services;

Romania

informing the work of the National Agency for Employment; evaluating the work of the Ministry of Foreign Affairs Human Rights Division; providing guidance in elaborating a decree regarding the elimination of racist and xenophobic symbols; use as a reference document by a human rights NGO when making an official complaint.

ECRI adopted **General Policy Recommendation No. 2** (GPR 2) – on specialised bodies at national level to combat racism, xenophobia, antisemitism and intolerance – on 13 June 1997. GPR 2 encourages member States to establish such bodies and elaborates a number of basic principles concerning their nature, composition, functioning and activities.⁴⁵⁵

As had been the case in respect of GPR 1, a majority of all survey respondents proved to be aware of GPR 2, and many indicated that they had found it to be of practical

⁴⁵² See section II. B 2 on ECRI's General Policy Recommendations.

⁴⁵³ ECRI's 7th General Policy Recommendation – on national legislation to combat racism and racial discrimination – was published on 17 February 2003, at around the same time as the survey questionnaires were sent to respondents. See section II. B 2 g).

⁴⁵⁴ See section II. B 2 a).

⁴⁵⁵ See Section II. B 2 b).

benefit to them in their work. Noteworthy examples given by respondents of the use which they have made of GPR 2 included:

Ireland

formulating policy, and providing a framework for liaison with national specialised bodies;

Latvia

as a toolbox of "concise comparative materials when working out local recommendations", and as a reference document in the context of drafting reports on the accountability of public officials in the domain of racism and xenophobia;

Romania

informing the debate regarding the establishment of the National Council to Combat Discrimination, and providing material for NG Os lobbying for changes in the structure of the National Council.

ECRI has found Roma/Gypsy communities to be among the groups most vulnerable to discrimination and intolerance. Consequently, on 6 March 1998, it adopted **General Policy Recommendation No. 3** (GPR 3) on combating racism and intolerance against Roma/Gypsies. GPR 3 outlines the need to develop adequate protection for members of these communities. It recommends that racism and intolerance against Roma/Gypsies be tackled in a number of ways, including legal measures, training and other mechanisms designed to enhance their participation in public life.⁴⁵⁶

Most respondents from Ireland, Latvia and Romania indicated that they were familiar with GPR 3, and that it had proven useful to them. Examples of the manner in which GPR 3 has been put to use in these three States include:

Ireland

assisting in the development of a programme to improve participation rates of Roma children at school;

Latvia

for a non-governmental respondent, providing an effective source of "complimentary arguments that it is necessary to pay special attention to Roma, within the sphere of minority rights"; helping to ensure that legal assistance is made available to Roma/Gypsy victims of discrimination;

Romania

designing the implementation of the Government's strategy to improve the situation of Roma communities; assisting in the formulation of the Romanian police service's contribution to the aforementioned strategy.

ECRI's **General Policy Recommendation No. 4** (GPR 4), on national surveys on the experience and perception of discrimination and racism from the point of view of

⁴⁵⁶ See section II. B 2 c).

potential victims, was adopted on 6 March 1998. It underlines the importance of collecting reliable data on racist and discriminatory acts and on the situation of minority groups.⁴⁵⁷

Responses to the survey indicated that the level of awareness of GPR 4 claimed by respondents is almost as high as their stated awareness of GPRs 1 to 3. However, the responses of those who professed themselves to be aware of GPR 4 contained less evidence that this Recommendation has made a practical impact on their work. As can be seen from the following summaries, this tendency was evident in the responses received from all three States:

Ireland

only one, non-governmental, respondent indicated that GPR 4 had proven useful in its work, and then only in the general sense that it had "informed lobbying activities";

Latvia

a few respondents indicated that GPR 4 had been useful, but without specifying the use to which they had put it. One, non-governmental, respondent indicated that it had been used to "double-check" the design of a survey regarding the Roma population in Latvia;

Romania

a number of respondents indicated that GPR 4 had been useful, but without supplying any further details. Equally, some respondents explicitly indicated that, although they were aware of GPR 4, it had not been useful to them in their work. Only one governmental respondent suggested that GPR 4 had been useful as a set of "working principles" drawing upon "previous experience in the field".

In **General Policy Recommendation No. 5** (GPR 5), ECRI addresses the need to combat discrimination and intolerance against Muslims. Adopted on 16 March 2000, it proposes a number of measures designed to address discrimination against members of Muslim communities.

The survey elicited a pattern of responses similar to those received in respect of GPR 4; namely, a reasonably high level of professed awareness of GPR 5, but relatively little evidence that it has been of practical assistance to respondents. Illustrative examples of the responses received include:

Ireland

a response received from a representative of a national specialised body indicated that GPR 5 had been used "for quotation and reference in national reports on racism to support changes in policy and in the context of the reaction against Muslims post 9/11". This was, however, the only response received from Ireland which provided a practical example of having used GPR 5;

⁴⁵⁷ See section II. B 2 d).

Latvia

a non-governmental respondent indicated that this issue "is not yet topical in Latvia", while another respondent from this sector added that although GPR 5 had "not yet" been used, it "will be taken into account when proceeding with projects that include the Muslim population in Latvia";

Romania

only one, governmental, respondent indicated that GPR 5 had been of assistance, without providing any practical example of the nature of that assistance.

General Policy Recommendation No. 6 (GPR 6), which was adopted by ECRI on 15 December 2000, addresses the issue of combating the dissemination of racist, xenophobic and antisemitic material via the Internet. It emphasises that all international work and instruments concerning the regulation of the Internet should include specific reference to the elimination of racist, xenophobic and antisemitic offences. It also stresses that strategies to combat racist offences committed via the Internet should include international co-operation between law enforcement agencies, and robust national legislation.⁴⁵⁸

Some respondents from all three countries surveyed indicated that they were not aware of the existence of GPR 6. However, amongst those who declared themselves familiar with this Recommendation, it appears that a number have found it to be of practical assistance in their work. For example:

Ireland

a respondent from a national specialised body qualified GPR 6 as "a useful re-statement and consolidation of the ways of dealing with racism on the Internet";

Latvia

a non-governmental respondent indicated that GPR 6 had been used during "discussions on the adoption of relevant legislation", while another respondent from the same sector stated that GPR 6 had served as an "indicator of the importance of [the] Internet in racism and hate crime. It has prompted us to include this aspect in projects";

Romania

a non-governmental respondent stated that GPR 6 had been used as basis to formulate a complaint to an Internet service provider.

2. Examples of "good practice"

In the course of its work, ECRI has built up a collection of positive examples of activities to combat racism undertaken in member States.

These examples of "good practice" have been outlined in four publications produced and disseminated by ECRI: "Combating Racism and Intolerance: A Basket of Good

⁴⁵⁸ See section II. B 2 f).

Practices"⁴⁵⁹; "Good Practices: Specialised bodies to combat racism, xenophobia, anti-semitism and intolerance at national level"⁴⁶⁰; "Examples of "good practices" to fight against racism and intolerance in the European media"⁴⁶¹; and "Practical examples in combating racism and intolerance against Roma/Gypsies".⁴⁶²

Survey participants from Ireland, Latvia and Romania were asked if they were familiar with these publications and, if so, if they had been useful to them in their work. The replies received suggest that many respondents are familiar with ECRI's examples of good practices, and that these four publications have proven to be a useful source of comparative information. The following responses serve to illustrate the nature of the use which has been made of ECRI's compendia:

Ireland

as a source of lobbying arguments, and to provide information to the membership of a non-governmental organisation; the examples of "good practice" have also been characterised as "useful guidelines" by a national specialised body;

Latvia

to garner comparative information regarding other European countries, which has served to strengthen a non-governmental organisation's arguments for good practice in Latvia; taken into account when elaborating and conducting research for a project on the situation of Roma in Latvia;

Romania

as a source of information for a non-governmental organisation when lobbying for change in the mandate of a national specialised body; during press conferences by a non-governmental organisation, to assist in presenting material to the media.

3. Broadening the scope of Article 14 of the European Convention on Human Rights through Protocol No. 12

The potential scope of Article 14 of the European Convention on Human Rights, which prohibits discrimination, was recently broadened by the adoption of Protocol No. 12 to that Convention.⁴⁶³

Survey participants were asked whether they were familiar with the provisions of Protocol No. 12, and whether they have been involved in advocacy or other work concerning the ratification of Protocol No. 12. The majority of respondents from all three countries surveyed indicated that they were familiar with Protocol No. 12. As regards the ratification of this new Protocol, most respondents from **Ireland** and **Romania** indicated that they were not directly involved in work to promote the Protocol's entry into force. By contrast, a majority of respondents from **Latvia** indicated that they are actively

459 CRI (96) 38.

460 CRI (99) 43.

461 CRI (2000) 19.

462 CRI (2001) 28.

463 For further details, see section II. B 4.

advocating ratification of Protocol No. 12, including by highlighting ECRI's view that ratification of the Protocol should be a priority for all Council of Europe member States.

4. European and World Conferences against Racism

ECRI is committed to playing a full part in the implementation of the commitments made at the European and World Conferences against Racism, *inter alia* as regards the implementation of national action plans against racism.⁴⁶⁴

Survey respondents were asked whether they were familiar with the outcomes of these conferences and, if so, whether they were involved in follow-up activities, such as contributing to national action plans against racism. Respondents who indicated that they were involved in such follow-up activities were invited to specify whether, in the context of those activities, they made reference to the work of ECRI.

A majority of the responses received from Ireland, Latvia and Romania stated that respondents were well aware of the outcomes of the European and World Conferences. Of these, a number of respondents in all three countries indicated that they are involved in activities to follow-up the conferences at national level, including through the development of national action plans against racism. However, few respondents in **Latvia** or **Romania** suggested that they are making direct use of ECRI's work in this area.

In **Ireland**, by contrast, a number of respondents from the non-governmental and governmental sectors indicated that are making direct use of relevant material which has been produced by ECRI. In this context, particular reference might be made to the response of a representative of a national specialised body, who specified that "we would strongly urge ECRI to give a stronger push on the development of national plans as some countries (not Ireland) are clearly dragging their heels or producing minimalist plans".

464 See further, section II. B 5.

D. RELATIONS WITH CIVIL SOCIETY

1. Introductory remarks

Enhancing its relations with relevant sectors of civil society is a major element of ECRI's strategy to combat racism and intolerance. ECRI recognises that non-governmental and other civil society organisations have a crucial role in transmitting awareness of its work to all parts of their constituencies, especially to marginalised groups. In order to develop its work in this area, ECRI has developed a detailed Programme of Action designed to publicise its activities and to enhance its relations with civil society. The main components of the Programme of Action include strengthening co-operation with non-governmental organisations, holding information sessions in member States, and developing the ECRI website.⁴⁶⁵

Survey participants from Ireland, Latvia and Romania were asked a number of questions regarding elements of ECRI's Programme of Action, including:

- what activities could ECRI undertake to **enhance relations with civil society** and, more particularly, how could co-operation with non-governmental organisations be strengthened?
- are **in-country information sessions** on the occasion of the publication of country-specific reports considered to be a useful initiative?
- how might **ECRI's website** be improved?

These questions elicited a wealth of responses, in particular from those in the non-governmental sector; their responses are synthesised in the following sub-sections.

2. Enhancement of relations with civil society

Respondents offered a number of suggestions regarding activities that ECRI could undertake in order to enhance its relations with civil society, especially as regards co-operation with non-governmental organisations.

A number of responses suggested that ECRI could help to build the capacity of non-governmental organisations by offering training regarding its standards, in addition to disseminating materials such as country reports, General Policy Recommendations and compilations of best practice.

Respondents from the non-governmental sector also emphasised that contact with ECRI can help to provide credibility for their domestic activities. For example, if it is evident that an NGO has been consulted by ECRI, this can serve to increase its prestige, and hence its influence *vis-à-vis* the national authorities. A Latvian respondent encapsulated this view in the comment that more "visible ties" between ECRI and non-governmental organisations "would help [to] underline their importance to officials."

⁴⁶⁵ See section C 2.

A recurring suggestion in responses to the survey is that ECRI could usefully help to establish regional and national networks of NGOs, and seek to promote co-operation between civil society and the institutions of State in the context of the implementation of ECRI's recommendations. A further suggestion made by a number of respondents from the non-governmental sector is that more advance notice should be given to all relevant civil society actors of future ECRI activities in their countries.

3. In-country information sessions

Respondents from all three countries surveyed indicated that they considered ECRI's in-country information sessions to be a welcome innovation.

At the time of the survey, Romania was the only country in which such an information session had taken place (in October 2002). A representative response received from Romania indicated that "the event was an excellent opportunity to develop dialogue between the authorities and ECRI and set new co-ordinates for further co-operation. It also brought to the attention of the authorities the need to foster collaboration." This "Round Table" in Romania was also deemed to constitute a clear signal to national institutions and non-governmental organisations that they should take an active role in implementing ECRI recommendations.

Respondents expressed enthusiasm about the prospect of further such sessions being held in the future. Suggestions received concerning the specific themes which might be discussed at such events included: migrant workers; prisoners; access to education; the EU Directive on Race and its implications for strengthening legislation on 'hate crime'; the development of good practices; ratification of regional instruments; awareness-raising; and data-collection.

4. Website

ECRI's website – www.ecri.coe.int – was generally acknowledged by survey respondents to be useful to them in their work. Indeed, many respondents rated it as "extremely useful" or "excellent".

The survey also generated a number of suggestions regarding future improvements which might be made to the site. A common element in several such suggestions was that, while the site contains a lot of useful documentation, it could be *presented* in a more user-friendly format. Specific proposals made by respondents included revamping the "home page" to include a clear statement of ECRI's mission and an account of the main areas in which it is active. It was also suggested that some of the content of the site could be re-organised into different zones, each tailor-made for a distinct target audience, e.g. national authorities, non-governmental organisations, teachers and youth groups.

Moving beyond purely presentational issues, some respondents suggested that the *usefulness* of the site could be enhanced if it were to include a dedicated search engine with a user-friendly interface.

As for the website's *content*, while the excellence of the current content was acknowledged, some respondents suggested that ECRI might consider including links to other anti-racist organisations, and to substantive work on racism and intolerance produced by other organisations. Finally, some respondents suggested that, in addition to the current content, key ECRI documents could be made available on the website in languages other than English and French.

IV. CONCLUSION

In October 1993, at their Vienna Summit, the Heads of State and Government of the Council of Europe member States pledged to accord a high political priority to the fight against racism, xenophobia, antisemitism and intolerance. Their political will was given concrete expression by the creation of ECRI. The Vienna Declaration provided a basic outline of ECRI's field of activity, but contained little guidance as to how this new mechanism might function in practice. From this starting point, ECRI has, in a progressive, step-by-step manner, "created itself", and developed a distinctive programme of activities.

From the very outset, ECRI has observed certain guiding principles: to be concrete and results-oriented, to prepare proposals which are useful and targeted, and to adopt a comprehensive approach to the problems of racism and intolerance by examining both legislative and policy aspects. It has also invested time in evaluating the progress which it has made at each stage in its development, before seeking to consolidate and capitalise upon the achievements which it has identified. Above all, ECRI has sought to conserve the notion of the protection and promotion of human rights as a cornerstone of its work.

This book does not chart the ten years of ECRI's existence in each and every detail. Instead, it focuses upon the "main messages" which have emerged from ECRI's second-round country reports. This country-by-country work has generated a detailed body of standards, which are reflected and further developed in ECRI's General Policy Recommendations. While ECRI is, first and foremost, an international monitoring body, it has also recognised the importance of working at grass-roots level, including by developing close relations with civil society.

The key issue with which this book engages is the value of ECRI's work in advancing the fight against racism in Europe and, more particularly, the extent to which its work has had a measurable impact in practice. For methodological, rather than policy, reasons, the impact evaluation covers only three countries. Other countries might equally well have been selected and, had they been, this might have affected the nature of certain findings. For example, since ECRI's country-by-country reports are used to lobby, the extent to which they impact on decisions and policies will inevitably vary according to the particular situation in each country. Their influence will depend *inter alia* on the degree to which particular issues are at the forefront of public awareness, and on the degree of receptivity to contributions from international bodies at a given time.

Nonetheless, notwithstanding their country-specific nature, at least some of the findings in the "impact" section are of potentially more general application.

ECRI's reports are working tools for those involved in the fight against racism at national level. They aim to provide a source of inspiration and impetus both for national authorities and for civil society actors. In practice, the attitude of national authorities on

certain issues seems to have shifted thanks to the national debates and discussions which have arisen around recommendations made in ECRI's reports. In addition, the reports seem to be providing a focus and debating tool for NGOs. In short, it would appear that the reports are serving a dual purpose: offering detailed proposals for change and opening up a space for reflection.

ECRI's General Policy Recommendations bring to the forefront issues which apply in a general fashion across Europe, thus providing a framework for the preparation of national strategies. Particular reference should be made to General Policy Recommendation No 7 on national legislation to combat racism and racial discrimination. Although comparatively recent (and hence not included in the impact evaluation), ECRI's own findings would suggest that this text has already contributed to legislative reforms in a number of member States and has positively influenced the content of legislation under preparation.

The national Round Tables organised by ECRI as part of its programme of activities to foster relations with civil society seem to be providing good opportunities for governments and NGOs to meet together on an equal footing. The Round Tables – hosted by ECRI – represent neutral ground upon which the two parties can discuss and debate. Thus far, the results appear to have been positive, and to have reinforced the effect of the country reports on which they have been based.

Concrete changes in legislation and policies are crucial, but another measure of impact is the level of debate to which ECRI's work has given rise in the member States. This is an area where ECRI can certainly claim a measure of success. The publication of country reports represents a key moment in this process. Media coverage of the reports, although variable from country to country, has increased substantially over the years. Inevitably, some reaction has been hostile but, even in such cases, the outcome has been positive in that a debate has been opened up, there has been a raising of awareness of certain issues, and a dialogue has been initiated.

Undoubtedly, one of ECRI's strong points is that it has striven to avoid conflict with other bodies involved in the fight against racism or the protection of human rights in general. On the contrary, ECRI has been at pains to build on what already exists, using a global and multidisciplinary approach. In this respect, ECRI has sought to play a role in translating international standards into practice at national level. This task of clarifying and elaborating upon international standards is a central - and distinctive - feature of ECRI's activities.

Moreover, ECRI has itself contributed to the development of standards, in an innovative way: starting from the bottom-up. ECRI's primary concern has been to make useful and concrete proposals, and these proposals have gradually come to form a corpus of standards. Without necessarily having had this aim at the outset, ECRI has, through its empirical approach, helped to create new standards in the fight against racism and racial discrimination.

In a number of important areas – specialised bodies, data collection, positive measures, immigration policies and practices – ECRI has developed and advocated its own distinctive view.

Through its close work with non-governmental organisations, ECRI also seeks to provide a sounding board for NG Os at European level. This is consistent with ECRI's vision of itself as an international monitoring body which actively seeks to achieve change at the level of individuals and their daily concerns.

ECRI can also claim credit for the fact that the fight against racism is higher on the European agenda than was the case ten years ago. ECRI has been, and remains committed to making a positive contribution to the ongoing debate about the meaning of racism in contemporary Europe. In this context, what first appeared to be a potential weakness has, paradoxically, proven to be one of ECRI's advantages: the fact that it is not based on a convention has allowed it to enjoy a wider degree of autonomy and flexibility in its work than might otherwise have been possible. Given the ever-evolving nature and character of racism, such flexibility continues to be a valuable asset.

To meet the challenges of the coming years, ECRI must be prepared to invest in enhancing the impact of its work, by continuing to look for the best ways in which to strengthen its contribution to the fight against racism. ECRI must also ensure that it preserves the elements which have sustained the quality of its work to date. It must remain impartial, open to dialogue, act completely independently and employ a collegiate approach. It must retain the guiding principle, which it has always respected, of treating States on an equal footing, examining the situation in each member State without fear or favour. Above all, ECRI must continue to work from the perspective of human rights, human dignity and equality which breathes life into the fight against racism and intolerance.



ECRI at its 30th plenary meeting in Strasbourg

APPENDICES

APPENDIX I

STATUTE OF ECRI

Resolution Res(2002)8 on the statute of the European Commission against Racism and Intolerance

*(Adopted by the Committee of Ministers on 13 June 2002
at the 799th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Articles 15. a and 16 of the Statute of the Council of Europe,

Having regard to the Declaration and the Plan of Action adopted on 9 October 1993 in Vienna by the first Summit of Heads of state and government of the member states of the Council of Europe, creating the European Commission against Racism and Intolerance (hereinafter referred to as "ECRI");

Having regard to the Declaration and Action Plan adopted on 11 October 1997 in Strasbourg by the second Summit of Heads of State and Government of the member states of the Council of Europe, deciding to intensify the activities of the European Commission against Racism and Intolerance;

Having regard to the Political Declaration adopted by Ministers of Council of Europe member states on 13 October 2000 at the concluding session of the European Conference against Racism, by which the governments of member states commit themselves to consider how best to reinforce ECRI;

Taking also into account the General Conclusions of the European Conference against racism which call upon participating states to consider how best to reinforce the action of ECRI;

Having consulted ECRI on ways to reinforce its action;

Having regard to Resolution II adopted by the European Ministerial Conference on Human Rights, in Rome on 4 November 2000;

Taking into account Recommendation 1438 (2000) of the Parliamentary Assembly, asking the Committee of Ministers to fully support the work of ECRI and ensure that member states give a concrete follow-up to its recommendations;

Deeply convinced of the need to take firm and sustained action at European level to combat the phenomena of racism, xenophobia, antisemitism and intolerance, and welcoming ECRI's contribution to this fight;

Noting that, since its creation by the first Summit, ECRI has developed its activities in a step-by-step fashion, giving priority to achieving concrete results;

Considering that the strengthening of ECRI should take as its starting point the work already done, and should consolidate and develop this work,

Decides to adopt the statute of ECRI as appended hereto:

Appendix to Resolution (2002)8 Statute of the European Commission against Racism and Intolerance (ECRI)

Article 1

ECRI shall be a body of the Council of Europe entrusted with the task of combating racism, racial discrimination, xenophobia, antisemitism and intolerance in greater Europe from the perspective of the protection of human rights, in the light of the European Convention on Human Rights, its additional protocols and related case-law. It shall pursue the following objectives:

- to review member states' legislation, policies and other measures to combat racism, xenophobia, antisemitism and intolerance, and their effectiveness;
- to propose further action at local, national and European level;
- to formulate general policy recommendations to member states;
- to study international legal instruments applicable in the matter with a view to their reinforcement where appropriate.

Article 2

1. One member of ECRI shall be appointed for each member state of the Council of Europe;
2. The members of ECRI shall have high moral authority and recognised expertise in dealing with racism, racial discrimination, xenophobia, antisemitism and intolerance;
3. The members of ECRI shall serve in their individual capacity, shall be independent and impartial in fulfilling their mandate. They shall not receive any instructions from their government.

Article 3

1. The members of ECRI shall be appointed by their governments in accordance with the provisions contained in paragraphs 2 and 3 of Article 2 above.
2. Each government shall notify the appointment of the member of ECRI in respect of its country to the Secretary General of the Council of Europe, who shall inform the Committee of Ministers thereof.
3. In the case where the Committee of Ministers considers that the appointment of one or more members of ECRI would not be in conformity with the provisions of paragraphs 2 and 3 of Article 2, it may ask the member state(s) concerned to proceed to another appointment.

4. The provisions of the preceding paragraph apply *mutatis mutandis* where, as a result of a change in a member's situation, his/her continued membership of ECRI would not be in conformity with the provisions of paragraphs 2 and 3 of Article 2.

5. The members of ECRI shall be appointed for a term of office of five years, which may be renewed. During their term of office, they may only be replaced if they have tendered their resignation, or are no longer able to exercise their functions, or in cases referred to in paragraph 4 above.

Article 4

1. If the government so wishes, a deputy to the ECRI member may be appointed. The provisions of articles 2 and 3 above shall also apply to the appointment of deputy members except that their mandate shall in all cases expire at the same time as that of the ECRI member.

2. The conditions concerning the participation of deputy ECRI members shall be set down in ECRI's internal rules of procedure.

Article 5⁴⁶⁶

The Parliamentary Assembly of the Council of Europe, the Congress of Local and Regional Authorities of Europe, the Holy See and the Management Board of the European Monitoring Centre on Racism and Xenophobia shall be invited to be represented in ECRI without the right to vote.

Article 6

1. ECRI may seek the assistance of rapporteurs or of consultants.

2. ECRI may organise consultations with interested parties.

3. ECRI may set up working parties on specific topics.

4. ECRI may be seized directly by non-governmental organisations on any questions covered by its terms of reference.

5. ECRI may seek the opinions and contributions of Council of Europe bodies concerned with its work.

6. ECRI shall periodically inform the Committee of Ministers on the results of its work.

Article 7

ECRI shall draw up an annual activity report which shall be submitted to the Committee of Ministers and made public.

Article 8

1. Meetings shall be held in camera unless ECRI decides otherwise. The quorum of ECRI shall be the majority of its appointed members.

2. ECRI shall draw up its own rules of procedure.

466 The European Commission will continue to be invited to participate in ECRI's work without the right to vote.

Article 9

The Secretariat of ECRI shall consist of an Executive Secretary and other staff members of the Directorate General of Human Rights.

Article 10

1. ECRI shall adopt its programme, which shall include, *inter alia*, three aspects:
 - country-by-country approach
 - work on general themes
 - relations with civil society
2. ECRI shall, as appropriate, integrate a gender perspective into its programme.
3. ECRI may, as necessary and within the limits of its terms of reference, introduce modifications or additions to its programme.

Article 11

1. In the framework of its country-by-country approach, ECRI shall monitor phenomena of racism, racial discrimination, xenophobia, antisemitism and intolerance, by closely examining the situation in each of the member states of the Council of Europe. ECRI shall draw up reports containing its factual analyses as well as suggestions and proposals as to how each country might deal with any problems identified.
2. In the framework of its country-by-country monitoring, ECRI shall conduct, in co-operation with the national authorities, contact visits in the countries concerned. It shall subsequently engage in a confidential dialogue with the said authorities in the course of which the latter may comment on the findings of ECRI.
3. ECRI's country reports are published following their transmission to the national authorities, unless the latter expressly oppose such publication. These reports shall include appendices containing the viewpoints of the national authorities, where the latter deem it necessary.

Article 12

ECRI's work on general themes shall generally consist of the adoption of general policy recommendations addressed to governments of member states and of the collection and dissemination of examples of "good practices" in combating racism, racial discrimination, xenophobia, antisemitism and intolerance.

Article 13

ECRI shall develop relations with civil society, shall have activities aimed at promoting dialogue and mutual respect among the general public and shall organise awareness-raising and information activities.

Article 14

1. The Committee of Ministers may adopt amendments to this Statute by the majority foreseen at Article 20.d of the Statute of the Council of Europe, after consulting ECRI.
2. ECRI may propose amendments to this Statute to the Committee of Ministers, which shall decide by the above-mentioned majority.

APPENDIX II

INTERNAL RULES OF PROCEDURE OF ECRI

(adopted on 20 March 2003)

The European Commission against Racism and Intolerance (hereinafter referred to as "ECRI")

Having regard to the Statute of ECRI, in particular to Article 8.2,

Adopts the present Rules:

I. ORGANISATION OF ECRI

Members of ECRI

Article 1

(Calculation of term of office)

The duration of the term of office of an ECRI member shall be calculated as from the approval of her/his appointment by the Committee of Ministers.

Article 2

(Solemn declaration)

Each member of ECRI shall, at the first meeting of ECRI at which she/he is present after her/his appointment, make the following solemn declaration:

"I solemnly declare that I will exercise my functions as a member of ECRI independently, impartially, conscientiously, and without accepting any instruction. I will respect on all occasions the confidentiality of ECRI's documents and internal debates; and I will stand by ECRI's decisions".

Article 3

(Resignation)

Resignation of an ECRI member shall be notified to the Chair, who shall inform the Secretary General of the Council of Europe.

Chair and Bureau of ECRI

Article 4

(Functions of the Chair and the Vice-Chairs)

1. ECRI shall elect from among its members a Chair, a first Vice-Chair and a second Vice-Chair.
2. The Chair shall conduct ECRI's discussions, co-ordinate the work of its working groups and represent ECRI, without prejudice to this function being fulfilled for particular purposes by other members.

3. In the exercise of her/his functions, the Chair shall remain under the authority of ECRI.
4. The Chair shall retain the right to participate in the discussions of ECRI and to vote.
5. Whenever the Chair is absent or stands down, she/he shall be replaced by the First Vice-Chair or, if she/he is absent or stands down, by the Second Vice-Chair.

Article 5
(Functions of the Bureau)

1. The Bureau shall consist of the Chair, the two Vice-Chairs and of four other members elected by ECRI.
2. The Bureau shall assist the Chair, perform all other functions conferred upon it by ECRI and make any relevant proposals.

Article 6
(Duration of term of office)

1. The Chair is elected for a term of two years. She/he may be re-elected once.
2. The two Vice-Chairs are elected for a term of one year. They may be re-elected twice.
3. The four other Bureau members are elected for a term of two years. They may be re-elected once.
4. Terms of office shall run for calendar years. In case of a vacancy arising, the replacing person shall complete the term in question.
5. No member of ECRI may be a Bureau member for more than six out of eight consecutive years.

Article 7
(Elections of the Chair, Vice-Chairs and other Bureau members)

1. The elections of the Chair, Vice-Chairs and other Bureau members shall be decided by secret ballot.
2. The elections shall take place in three stages:
 - a. Election of the Chair:
If no candidate receives the votes of the majority of members present at the beginning of this election in the first ballot, a second ballot shall take place if there is only one candidate or otherwise a second ballot shall take place between the two candidates who have received most votes. If neither of these two candidates receives the aforementioned majority in the second ballot, a third ballot shall take place between them. The candidate who receives the most votes in such a third ballot shall be declared elected.

In the first ballot, in case of equal votes between candidates who have not received the most votes, an intermediate ballot shall take place between these candidates. The candidate who receives the most votes in the intermediate ballot shall continue to the second ballot. In case of equal votes between candidates in the intermediate ballot, a drawing of lots shall take place between them.

In the third ballot, in case of equal votes between candidates, a drawing of lots shall take place between them.

- b. Election of the two Vice-Chairs: the two candidates who receive the highest number of votes cast shall be elected first Vice-Chair and second Vice-Chair.

In case of equal votes between candidates, a drawing of lots shall take place between them.

- c. Election of the other Bureau members: the candidates having received the highest number of votes cast shall be elected.

In case of equal votes between candidates, a drawing of lots shall take place between them.

3. Elections shall take place at the last plenary session of each calendar year, except in the case of a vacancy arising, where an election shall take place as soon as possible and the above rules shall be applied accordingly.

4. Candidatures for the elections shall preferably be transmitted to the Secretariat at the latest two weeks before the elections. The Secretariat shall draw up a list of these candidates and distribute it to the members of ECRI. Persons whose candidatures are not announced at the end of the first day of the meeting at which the elections are to take place are not eligible unless they have been candidates in a previous election during the same session.

ECRI deputy members

Article 8

(Participation of deputy members)

1. A deputy member of ECRI can participate in ECRI plenary meetings and working groups meetings only when she/he replaces the ECRI member.

2. The deputy has the same right to vote as the ECRI member she/he replaces.

3. The Secretariat shall send the deputy a copy of any correspondence addressed to ECRI members, including working documents and meeting reports.

Representatives without the right to vote

Article 9

(Participation)

Representatives without the right to vote may take part in ECRI meetings held in camera, unless ECRI decides otherwise.

Secretariat of ECRI

Article 10

(Secretariat)

The Secretary General shall provide ECRI with the necessary staff, including an Executive Secretary, as well as with the administrative and other services it may require.

II. FUNCTIONING OF ECRI

Article 11

(Languages)

The official and working languages of ECRI shall be English and French.

Article 12

(Holding of meetings)

1. ECRI and its Bureau shall hold such meetings as are required for the exercise of their functions.
2. The Executive Secretary shall notify the members of ECRI of the date, time and place of each ECRI meeting.
3. It shall be for each member to decide whether she/he will attend the meeting in person or be replaced by her/his deputy and to inform the Secretariat accordingly.

Article 13

(Agenda)

1. In consultation with the Chair, the Secretariat shall send a draft agenda to the members along with the notification of the meeting.
2. The agenda shall be adopted by ECRI at the beginning of the meeting.

Article 14

(Meeting Documentation)

The Secretariat shall be responsible for preparing and circulating documents which are to be examined by ECRI.

Article 15

(Quorum)

The quorum of ECRI shall be the majority of its appointed members.

Article 16

(Privacy of meetings)

1. Meetings shall not be opened to the public, unless ECRI decides otherwise. ECRI's deliberations remain confidential.
2. Discussions relating the country-by-country reports shall always be held in camera.

III. CONDUCT OF BUSINESS

Article 17

(Proposals)

Any proposal for an ECRI decision must be submitted in writing if a member of ECRI so requests. In that case, it shall not be discussed until it has been circulated.

Article 18

(Order to follow in the examination of proposals or amendments)

1. Where a number of proposals relate to the same subject, they shall be put to the vote in the order in which they were submitted. In case of doubt as to the order of priority, the Chair shall decide.
2. Where a proposal is the subject of an amendment, the amendment shall be put to the vote first. Where two or more amendments to the same proposal are presented, ECRI shall vote first on whichever departs furthest in substance from the original proposal, and so on until all the amendments have been put to the vote. However, where the acceptance of one amendment necessarily entails rejection of another, the latter shall not be put to the vote. The final vote shall then be taken on the proposal as amended or not amended. In case of doubt as to the order of priority, the Chair shall decide.
3. Parts of a proposal or amendment may be put to the vote separately.

Article 19

(Order of procedural motions)

Procedural motions shall take precedence over all other proposals or motions except points of order. They shall be put to the vote in the following order:

- a. suspension of the meeting;
- b. adjournment of the meeting;
- c. adjournment of discussion on the item in hand;
- d. closure of discussion on the item in hand.

Article 20
(Re-examination of a question)

Once a decision has been taken, the question shall not be re-examined unless a member of ECRI so requests and two-thirds of the members present agree to this request.

Article 21
(Votes)

1. Subject to the provisions of Articles 7 and 24, decisions shall be taken by consensus unless a member of ECRI calls for a vote. If a vote is called for, the decision shall be taken by show of hands unless a secret ballot is requested by a member of ECRI.

2. Decisions taken by vote shall be decided by the majority of the votes cast. "Votes cast" shall mean the votes of members cast for or against. In case of equal votes, the decision shall be postponed for a short time. At the second vote on the question, in the case of equal votes, the Chair shall have the casting vote.

IV. DECISIONS AND REPORTS OF MEETINGS

Article 22
(Decisions and reports of meetings)

1. At the end of each meeting, the Secretariat shall submit to ECRI for approval a draft abridged meeting report containing a list of decisions adopted at that meeting.

2. The Secretariat shall subsequently prepare a draft full meeting report containing also a summary of the discussions held at the meeting and shall submit it to the Chair and Vice-Chairs for approval. The full meeting report as approved by the Chair and Vice-Chairs shall then be sent to ECRI members.

Article 23
(Annual report)

1. An annual report on ECRI's activities shall be prepared by the Secretariat for each calendar year. This report shall be adopted by ECRI at its first meeting of the following year.

2. The annual report shall be submitted to the Committee of Ministers and made public.

V. AMENDMENTS

Article 24

(Amendments to the Rules of Procedure)

1. Any amendment to the Rules of Procedure must be proposed and circulated to each member, unless the members of ECRI present unanimously decide otherwise.
2. Any amendment to the Rules of Procedure shall require a decision taken by a two-thirds majority of votes cast.

Appendix to the Internal Rules of Procedure of ECRI

(This appendix forms an integral part of the Internal Rules of Procedure)

Introduction

1. Following the entry into force on 31 December 2002 of Resolution Res (2002) 8 concerning the Statute of ECRI, ECRI adopted its Internal Rules of Procedure at its 30th plenary meeting (18-20 March 2003).
2. The Internal Rules of Procedure are mainly based on the document on "ECRI's internal organisation and operating methods", adopted by ECRI at its 12th plenary meeting (15-18 September 1997), and which was in force until ECRI's 29th plenary meeting (10-13 December 2002).

Article 2 of the Internal Rules of Procedure (Solemn declaration):

3. The solemn declaration is proclaimed orally by each ECRI member. It is also proclaimed orally by each deputy member.

Article 6 of the Internal Rules of Procedure (Duration of terms of office):

4. The following exceptional transitional provisions apply for the year 2003:
 - The ECRI Bureau members elected in December 2001 for a term of office of two years (Chair and two other Bureau members) will remain in their posts until December 2003.
 - Elections will take place during the 30th plenary meeting of ECRI (18-20 March 2003) for the posts of two Vice-Chairs and two other Bureau members, for whom the terms of office, which were due to expire in December 2002, had been extended by ECRI, as an exceptional measures, until its 30th plenary meeting.
5. The rule contained in paragraph 5 of Article 6 stipulating that no member of ECRI may be a Bureau member for more than six out of eight consecutive years will come into force with the adoption of these Internal Rules of Procedure and only applies to terms of office carried out subsequent to such adoption.

Article 8 of the Internal Rules of Procedure (Participation of deputy members):

6. A deputy member may not ask for the floor or participate actively in ECRI meetings if she/he is attending at the same time as the member. This provision does not preclude the non-active presence of the deputy member in the meeting room.

Article 9 of the Internal Rules of Procedure (Participation of representatives without the right to vote)

7. Representatives without the right to vote participate only in ECRI's plenary meetings. They do not participate in ECRI's working groups.

8. During ECRI's discussions on its country-by-country reports, representatives without the right to vote may speak only once on each issue under discussion.

9. ECRI's confidential working documents are transmitted to representatives without the right to vote only upon written confirmation of their participation in the meeting at which the documents in question are to be examined.

APPENDIX III

LIST OF PUBLICATIONS

- ECRI and its programme of activities (Strasbourg, May 2003)
- Resolution (2002)9 on the Statute of the European Commission against Racism and Intolerance (ECRI), adopted by the Committee of Ministers on 13 June 2002
- ECRI's Programme of action on relations with civil society (Strasbourg, October 2002)
- Annual Report on ECRI's activities covering the period from 1st January to 31st December 2002
- Legal measures to combat racism and intolerance in the member States of the Council of Europe (revised version: Strasbourg, 2000, and addendum: Strasbourg, 2003)
- Examples of "Good practices": Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level (Strasbourg, December 2003)
- Examples of "Good practices" to fight against racism and intolerance in the European media (Strasbourg, April 2000)
- Practical examples in combating racism and intolerance against Roma/Gypsies (Strasbourg, October 2001)
- Legal instruments for combating racism on Internet (Strasbourg, August 2000)
- Compilation of ECRI's General Policy Recommendations (Strasbourg, November 2003)
- ECRI General Policy Recommendation No. 1: Combating racism, xenophobia anti-semitism and intolerance (Strasbourg, 4 October 1996)
- ECRI General Policy Recommendation No. 2: Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level (Strasbourg, 13 June 1997)
- ECRI General Policy Recommendation No. 3: combating racism and intolerance against Roma/Gypsies (Strasbourg, 6 March 1998)
- ECRI General Policy Recommendation No. 4: National surveys on the experience and perception of discrimination and racism from the point of view of potential victims (Strasbourg, 6 March 1998)
- ECRI General Policy Recommendation No. 5: Combating intolerance and discrimination against Muslims (Strasbourg, 27 April 2000)

- ECRI General Policy Recommendation No. 6: Combating the dissemination of racist, xenophobic and antisemitic material via the Internet (Strasbourg, 15 December 2000)
- ECRI General Policy Recommendation No. 7: National Legislation to Combat Racism and Racial Discrimination (Strasbourg, 13 December 2002)
- ECRI's country-by-country approach:
 - First round :
 - Volume I (Strasbourg, September 1997)
 - Volume II (Strasbourg, March 1998)
 - Volume III (Strasbourg, 15 June 1998)
 - Volume IV (Strasbourg, 26 January 1999)
 - Volume V (Strasbourg, 13 March 1999)
 - Volume VI (Strasbourg, 24 May 1999)
 - Volume VII (Strasbourg, 9 November 1999)
 - Second round :
 - Albania (Strasbourg, 3 April 2001)
 - Austria (Strasbourg, 3 April 2001)
 - Belgium (Strasbourg, 21 March 2000)
 - Bulgaria (Strasbourg, 21 March 2000)
 - Croatia (Strasbourg, 3 July 2001)
 - Cyprus (Strasbourg, 3 July 2001)
 - Czech Republic (Strasbourg, 21 March 2000)
 - Denmark (Strasbourg, 3 March 2001)
 - Estonia (Strasbourg, 23 April 2002)
 - Finland (Strasbourg, 23 July 2002)
 - France (Strasbourg, 27 June 2000)
 - Georgia (Strasbourg, 23 April 2002)
 - Germany (Strasbourg, 3 July 2001)
 - Greece (Strasbourg, 27 June 2000)
 - Hungary (Strasbourg, 21 March 2000)
 - Ireland (Strasbourg, 23 April 2002)
 - Italy (Strasbourg, 23 April 2002)
 - Latvia (Strasbourg, 23 July 2002)
 - Malta (Strasbourg, 23 July 2002)
 - The Netherlands (Strasbourg, 13 November 2001)
 - Norway (Strasbourg, 27 June 2000)
 - Poland (Strasbourg, 27 June 2000)
 - Portugal (Strasbourg, 4 November 2002)
 - Romania (Strasbourg, 23 April 2002)
 - Russian Federation (Strasbourg, 13 November 2001)
 - Slovakia (Strasbourg, 27 June 2000)
 - Switzerland (Strasbourg, 21 March 2000)
 - "The Former Yugoslav Republic of Macedonia" (Strasbourg, 3 April 2001)

- Turkey (Strasbourg, 3 July 2001)
- Ukraine (Strasbourg, 23 July 2002)
- United Kingdom (Strasbourg, 3 April 2001)
- Compilation of ECRI's second country-by-country reports (Strasbourg, January 2004)
- Proceedings of the Round Table on "Dialogue against Violence" (Strasbourg, 21 March 2002)
- Proceedings of the European Conference against Racism (Strasbourg, 11-13 October 2000)
- Activities of the Council of Europe with relevance to combating racism and intolerance (Strasbourg, January 2004)
- Recommendations adopted by the Parliamentary Assembly of the Council of Europe in the field of combating racism and intolerance (Strasbourg, September 1998)
- Recommendations adopted by the Committee of Ministers of the Council of Europe in the field of combating racism and intolerance (Strasbourg, September 1998)
- Texts of international instruments relevant to the work of ECRI (Strasbourg, October 1999)